Report of Inquiry into Safety in the Long Haul Trucking Industry

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Prepared for the Motor Accidents Authority of NSW by

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Many people went out of their way to assist the Inquiry. Some drivers, wives of drivers, transport company owners/managers and other individuals gave up their time and travelled considerable distances to attend hearings. Professor Michael Belzer, from the University of Michigan, travelled furthest and gave up considerable personal time and convenience to assist the Inquiry. Darren Nolan (Nolan's Transport), Dean Croke, Philip Laird, Arnold McLean and Bill Healey (ARA) prepared extremely detailed submissions and readily supplied additional material. Many other people in the industry provided invaluable information including Peter Robinson from Transport Management Australia, Geoff Tinney from the NSW Road Transport Association, Jan Pattison from Queensland and Lyn Bennetts from Victoria. Others such as Kim Hassall from Australia Post, John Lambert (an engineer) and David Ferguson, ex RTA, provided invaluable additional information. Yet others, such as Professor Simon Folkard from the University of Wales, Swansea responded rapidly and graciously to requests for research papers. The Inquiry chair is grateful for the generosity of Santina Perrone in allowing him to make use of some findings of her as yet unpublished PhD thesis. Ian Faulkes from the STAYSAFE Committee was an invaluable source of information, in terms of providing relevant STAYSAFE reports as well as useful observations and supplying earlier inquiries into trucking undertaken throughout Australia. Frances Marshall and Peter Anderson from the Tow Truck Authority supplied material and WorkCover NSW, the RTA and the National Road Transport Commission readily responded to requests for additional information.

This Inquiry would not have been possible without the time, effort and cooperation of numerous representatives of transport companies, industry associations, insurers, community organisations, regulatory agencies, drivers, the Australian Retailers Association, ex police and RTA inspectors and others associated with the industry. Their frankness made the Inquiry task considerably easier.

The inquiry owes a particular debt to the wives and partners of truck drivers, including Judith Penton and members of CFAT along with many other women, who gave evidence. Living with and, in the case of owner/drivers often working alongside or acting as book-keeper/business manager, they were in a position to provide invaluable observations on the difficulties confronted by long distance truck drivers. This included insights into the extent and impact of tight schedules, financial strain and the problems of balancing work and family commitments. The Inquiry is also grateful to other women who work in roadhouses providing information on their knowledge of the long haul trucking industry.

At a personal level, the Chair would like to thank David Bowen, General Manager of the Motor Accidents Authority of NSW, for the support he provided to throughout the Inquiry.

Finally, this Inquiry was made possible by the cooperation and strong support of the three Ministers with overlapping responsibility for the road transport industry, namely the Special Minister for State, John Della Bosca, the Minister for Transport Carl Scully, and the then Minister for Industrial Relations, Jeff Shaw. Following Jeff Shaw's resignation, John Della Bosca assumed the role of Minister for Industrial Relations.

STEERING COMMITTEE

David Bowen, General Manager, Motor Accidents Authority of NSW

Donald Carseldine, Manager Licensing Policy, Roads and Traffic Authority of NSW

Mike Edmonds, National Manager – TruckSafe and Communications Australian Trucking Association

Jenny Thomas, RWTS Team, WorkCover New South Wales

John Vallance, MMI Insurance/Allianz Australia

Andrew Whale, Senior Executive Officer, Transport Workers' Union of Australia

REPORT OF AN INQUIRY INTO SAFETY IN THE LONG HAUL TRUCKING INDUSTRY

TERMS OF REFERENCE

The Inquiry was established and coordinated by Motor Accidents Authority of New South to investigate safety in the long haul road transport industry. The aim of the Inquiry was to produce a report on safety in the industry, including occupational health problems. The final report was to include a Draft Code of Practice for improving safety in the long haul road transport industry as well as recommendations on changes to regulation, compliance infrastructure and policies where appropriate.

The terms of reference of the Inquiry were;

1. Impact of clients' and consignors' requirements on the drivers including:
    - Industry tendering practices;
    - Transport contacts between road transport companies and major clients;
    - Methods of pricing;
    - Lack of client responsibility for driving hours, driver performance and remuneration for drivers;
    - Client/consignor requirements as to delivery times.

2. Extent of proper enforcement in the industry of driving hours, speeding and drug use.

3. Current forms of regulation in the industry, whether a self-regulation or external regulation model is most appropriate for the road transport industry and what forms this should take.

4. Whether current regulatory bodies with responsibility for the industry are properly co-ordinated with each other and sufficiently resourced.

ABBREVIATIONS

ABS	Australian Bureau of Statistics
ACCC	Australian Consumer and Competition Commission
AIRC	Australian Industrial Relations Commission
ARA	Australian Retailers Association
ARRB	Australian Road Research Board
ARTF	Australian Road Transport Federation
ATA	Australian Trucking Association
ATAC	Australian Transport Advisory Council
ATSB	Australian Transport Safety Bureau
AWA	Australian Workplace Agreement
BTE	Bureau of Transport Economics
CFAT	Concerned Families of Australian Truckies
CRASH	Canadians for Responsible and Safer Highways
CTP	Compulsory Third Party
DOT	Department of Transportation (USA)
DSMD	Driver Specific Monitoring Device
EDI	Electronic Data Interchange
EPA	Environmental Protection Authority
EU	European Union
FIRS	Federal Interstate Registration Scheme
FMCSA	Federal Motor Carrier Safety Administration (USA)
FMP	Fatigue Management Plan
FORS	Federal Office of Road Safety (now part of ATSB)
GHQ	General Health Questionnaire
GPS	Global Positioning Satellite system
GVM	Gross Vehicle Mass
ICCG	Interstate Compliance Consultative Group
kph	kilometres per hour
LHT	Long Haul Transport
LTSA	Land Transport Safety Authority (New Zealand)
MAA	Motor Accidents Authority of New South Wales
NIOSH	National Institute of Occupational Safety and Health (USA)
NITL	National Industrial Transportation League (USA).
NOHSC	National Occupational Health and Safety Commission
NOP	Net Operating Profit
NRMA	National Road Motorists Association
NRTC	National Road Transport Commission
NSW	New South Wales
OHS	occupational health and safety
OSHA	Occupational Safety and Health Administration (USA)
PIN	Penalty Infringement Notice
RONA	Return on Net Assests
QTA	Queensland Trucking Association
RTA	Roads and Traffic Authority of New South Wales
STAYSAFE	Parliament of NSW Joint Standing Committee on Road Safety
TFMS	Transitional Fatigue Management Scheme
TWU	Transport Workers Union of Australia
VMD	Vehicle Monitoring Devices
WA	Western Australia
WACC	Weighted Average Cost of Capital
WWA	Worksafe Western Australia

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INQUIRY PROCESS

The Inquiry was established in April 2000 by the Motor Accidents Authority of New South Wales (MAA) with the approval of the Special Minister of State, John Della Bosca, the Minister for Transport, Carl Scully, and the then Minister for Industrial Relations, Jeff Shaw. The MAA is responsible for administering compulsory third party insurance of all motor vehicles in the state and the inquiry was established in response to steep increases in the premiums pertaining to heavy vehicles and a more general concern with regard to safety in long distance trucking.

Preliminary to the actual inquiry a steering committee was set up. This committee consisted of representatives of the Motor Accident Authority, Roads and Traffic Authority, WorkCover NSW, Transport Workers Union and the Australian Trucking Association. After being established, notices advertising the Inquiry and inviting submissions were placed in major newspapers as well as trucking journals. Contact was made or letters written to a number of key parties (including agencies and other bodies interstate) asking for input and submissions. Informal meetings were arranged in April and May 2000 with a wide range of interested parties to obtain background information and to encourage both written and verbal submissions. These informal meetings involved academic researchers, insurers, motorist organisations, transport companies, representatives of clients, road transport associations (including specialist bodies such as those concerned with livestock) and various government agencies).

These meetings also helped to identify previous state and federal government inquiries and other documents pertaining to safety in long haul road transport or relevant (even if only in an indirect or tangential way) to the issues being considered by this Inquiry. Over the last 20 years there have been numerous reports and other documents prepared in relation to the long haul trucking industry or road transport more generally and it was deemed important to examine these to better inform the Inquiry's own considerations. For example, issues like tendering practices have been raised in earlier reports and several reports had recommended compulsory accreditation or operator licensing – an issue initiative proposed by a number of parties making representations to the Inquiry. Within its tight time and logistical constraints, the Inquiry also sought information from some agencies, organisations and individuals in North America and Europe in order to gain a comparative perspective on safety issues in long road transport. One outcome from this was to invite Dr Michael Belzer to give evidence at hearings of the Inquiry. Belzer was a former long distance truck driver and expert on US trucking industry at the University of Michigan who had just published a book on the effects of trucking deregulation in the USA and had also just completed a study of safety in the second largest US haulage company. During his visit (funded by the Motor Accidents Authority) Dr Belzer spoke to a number of interested parties. Finally, the Inquiry examined the international scientific literature on safety and health in road transport.

To provide detailed and systematic evidence on the OHS experiences of drivers Dr Claire Mayhew, a senior experienced OHS researcher with a record of prior research into road transport, was engaged to undertake a representative survey of 300 long distance truck drivers in New South Wales. Direct interviews were conducted on the basis of a semi-structured questionnaire similar to ones used previously in research into the health and safety experiences of road transport and other workers. Efforts were made to ensure the survey was a representative sample of drivers engaged in different routes (all major highways) and different categories of drivers (owner-driver, small fleet driver and large fleet driver). The Inquiry was also able to draw on the findings of two large surveys (in 1990 and a follow-up in 1999) undertaken by a team headed by Dr Ann Williamson, formerly with NOHSC and currently Director of the Injury Risk Management Research Centre at the University of New South Wales. These surveys focused on the issue of driver fatigue although they raise a wide range of other issues relating to safety and health. Taken together, the surveys provided a very solid

basis on evidence on OHS in the long haul road transport industry and both provided critical insights to issues central to the terms of reference of this Inquiry. Further, given that safety in long haul road transport is administered by a number legislative instruments and agencies, Richard Johnstone was engaged to produce a report on these overlaps and possible means of streamlining compliance and related issues raised in the course of the Inquiry. Johnstone is a Professor of Law at the Australian National University (and formerly an Associate Professor at the TC Bierne School of Law University of Queensland) and a leading expert on employment and OHS law, being the author of the standard text on the subject.

The Inquiry received over 50 written submissions (listed at the end of the Report). Those making submissions included individual owner-drivers, individuals and community groups concerned with road safety, academics with expertise on trucking safety, the Transport Workers' Union of Australia (federal and several state branches), Concerned Families of Australian Truckies (CFAT), small and large transport companies, the Australian Trucking Association and a number of state industry or more specialist bodies. Written submissions were also received from a range of government agencies with an interest in the safety of long distance trucking including the National Road Transport Commission, the NSW Environmental Protection Authority, WorkCover NSW, insurers and rail-freight organisations. Given the interstate nature of the industry a number of submissions emanated from organisations and individuals in other states (from as far away as north Queensland to Western Australia). Government agencies to make submissions included WorkCover Victoria and Western Australian Transport.

Public hearings were undertaken between mid July and late August 2000 in a variety of locations including Sydney, Canberra, Newcastle, Grafton and Albury. A number of operators and others travelled considerable distances to attend hearings at their own expense and the Inquiry would like to acknowledge its gratitude. Given the interstate nature of the industry and the co-operation of government agencies in other states, hearings were also held in Melbourne and Brisbane. During the Brisbane hearing the inquiry heard submissions from transport operators based in Gatton, Rockhampton and Kingaroy. The hearings in Albury also included transport operators based in Victoria. These hearings were not held under oath but were aimed at elucidating evidence from a range of parties with knowledge of safety-related matters in the industry. In total over 60 individuals and groups/organisations made separate oral submissions to the Inquiry (if multiple attendance by particular organisations is included the number of persons making submissions exceeded 100). A full list of those who gave evidence at hearings can be found at the end of this Report.

Throughout its investigations the Inquiry received invaluable assistance from a steering committee established by the Motor Accidents Authority, which included representatives of key organisations with an involvement in and knowledge of the long distance trucking industry. Bodies represented included the Australian Trucking Association (ATA) which is the peak body representing the trucking industry. The ATA's membership consists of six State/Territory industry associations, sector associations (like the Australian Livestock Transporters Association), national transport companies (such as MPG Logistics and K&S/Scott group), ancillary companies with transport interests (Austalia Post and Boral), and representatives of owner/drivers and the Transport Workers Union. Formed in the early 1990s as the Road Transport Industry Forum following major trucking safety disasters in the late 1980s, the ATA has strategic interests in safety, environment, taxes/charges, regulation and viability. With its headquarters in Canberra, the ATA has taken a strong role in promoting a nationally coordinated approach to industry regulation. It should be noted that the largest single transport company in Australia, Toll Express, is not a member of the ATA although it belongs to the various state industry bodies (the Inquiry spoke to representatives of this company as well as other large companies).

In terms of government agencies, aside from the Motor Accidents Authority itself (which administers the compulsory third party insurance scheme covering all vehicles in NSW), there were representatives of the Roads and Traffic Authority (RTA) and WorkCover NSW. Like its counterparts in other States, the RTA is responsible for road safety and traffic management on NSW road and undertakes enforcement of road transport laws in conjunction with the NSW Police Service (which declined an invitation to send a representative to the committee but cooperated fully with the Inquiry). WorkCover NSW is the administering agency for the NSW Occupational Health and Safety Act and also has coverage of road transport activities where, like the road freight industry, they involve workplaces and work activity. Another major stakeholder represented on the Steering Committee was insurers who provided a number of forms of coverage for the industry (compulsory third party, comprehensive motor vehicle insurance and workers' compensation). Finally, the principal union - the Transport Workers Union - that covers truck drivers (as well as other transport-related occupations) was represented. While the union's membership is mainly composed of employee drivers it has some owner/driver membership.

For the purpose of the Inquiry long haul trucking was defined as a truck travelling with a load on a single trip to an unloading destination of over 100 kilometers. This definition corresponds with the regulatory requirement for logbooks to be kept and carried and the definition used in the National Road Freight Industry Inquiry (May et al, 1984). Further, to confine consideration to interstate trucking would be to exclude long distance intrastate trucking. There was no logical reason to do this since intrastate trucking is significant, involves single trips of which could typically be around 400km and might well exceed 600km within NSW (and even longer distances in larger states), and arguably entails the same issues as interstate trucking. The term long haul and long distance is used interchangeably.

Finally, this Report wishes to acknowledge the invaluable contribution to the Inquiry process of Leicester Ramsey and Associates. Leicester was appointed by the Motor Accidents Authority to assist with the Inquiry. This involved a wide range of tasks including arranging and playing an active role in both meetings and hearings, collecting information, as well as providing valuable input, ideas and suggestions. To describe his contribution as invaluable would be an understatement.

REPORT OF AN INQUIRY INTO SAFETY IN THE LONG HAUL TRUCKING INDUSTRY

EXECUTIVE SUMMARY

Evidence of Major Safety Problems

During the course of the Inquiry, numerous submissions were received from a wide range of parties, expressing grave concern with safety in the long haul trucking industry. The parties included individual drivers and operators, individuals and community groups, motorist organisations, insurers, government agencies, the TWU, Concerned Families of Australian Truckies and several industry associations. There is ample evidence to support these concerns.

Compared to other modes of transport or other industries more generally, long distance road transport has a poor safety record. Indeed, truck driving remains one of the most dangerous occupations and these risks extend, in a substantial way, to other road users. Some indicators of the extent of these problems are:

- **In 1999 189 Australians died in crashes involving articulated trucks (or about one tenth of all road fatalities that year), with 51 of these being truck drivers. In absolute terms there has been no trend improvement in either the number of fatalities (truck driver or other road user) or the number of fatal crashes involving articulated trucks after 1991. By way of contrast, since 1991 there has been an improvement in the total number of fatal all-vehicle crashes and fatalities.**
- **Crashes involving articulated trucks constitute almost 9% of all crashes and account for just under 10% of all vehicle fatalities. These ratios have been steady over a long period indicating improvements here could have substantial benefits to the community.**
- **In comparison to the USA, the UK and Finland, available evidence indicates that Australians are almost two times more likely to die in a crash involving a heavy vehicle.**
- **As the most populous state and as the hub of interstate transport on the eastern seaboard, NSW recorded the largest number of deaths (64 including 13 truck drivers) in 1999. There has been, at best, no trend improvement after 1991 (with the possibility of an upward trend since 1995). The number of crashes (all categories of seriousness) involving articulated trucks on NSW roads has increased from 948 in 1991 to 1,520 in 1999 (no comparable figures are available for Australia).**
- **In 1999 figures supplied by the RTA indicate that of 1595 persons killed or injured on NSW roads in heavy truck crashes, truck driver speeding was seen to contribute to 170 casualties, truck driver fatigue to 98 casualties and insecure loads to 25 casualties. Of 830 persons killed or injured in crashes involving articulated trucks, truck driver speeding contributed to 130 casualties, driver fatigue to 70 and insecure loads to 15 deaths or injuries.**
- **In recent years there has been a sharp increase in the claims cost of compulsory third party insurance involving heavy vehicles in NSW, forcing a rise in premiums. Private insurers believe existing premiums still do not cover claim costs and expressed similar concerns about the trucking industry in relation to comprehensive vehicle insurance and (to a lesser extent) workers' compensation claims.**
- **Ignoring single vehicle incidents, truck drivers were at fault in roughly one quarter of crashes, Australia-wide for the years 1990-1996. While these figures counter the**

public image of unprofessional drivers, they are still unlikely to assuage community concerns. In single vehicle incidents the truck driver was deemed at fault in over 90% of cases (a significant number of these were fatigue related).

- **Quite apart from the toll in terms of human suffering, the poor safety performance of the long haul road freight industry entails significant economic costs to the community. In the early 1990s it was estimated that the cost per person of a road crash was $771,800 in the case of a fatality and $131,800 for a hospital admission injury. Expressed in terms of current dollar values these figures would be far higher, but even using the unadjusted figure would result in a total cost of injuries and deaths running into hundreds of millions of dollars. Further, even a relatively m**
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- **inor truck smash can involve significant costs (for towing, repair, traffic disruption, and police and emergency services staff time to name but a few obvious areas). During the course of its investigations, the Inquiry also became aware of a number of substantial economic externalities in relation to the industry which means that the a significant component of economic burden of poor safety performance is being passed onto the community. It is arguable that these and other externalities amount to a subsidy to the road transport industry that is undermine competitive neutrality.**

Official statistics on death or serious injury in a collision is only one indicator of the serious health and safety issues associated with long haul trucking.

- **A representative survey of 300 long distance truck drivers commissioned by the Inquiry revealed that around 14% had experienced a crash in the past 12 months, with the figure being highest for small fleet employee drivers (17.3%) and owner/drivers (13.1%). Further, small fleet drivers and owner/drivers were around twice as likely as large fleet drivers to report serious crashes (and about half as likely to report little crashes that didn't stop them working). Almost a quarter of drivers reported a crash in the last five years, with small fleet drivers again reporting most (26%). Compared to large fleet drivers, owner/drivers and small fleet drivers were more likely to report serious crashes (20.2% and 18.3% respectively). While a third of crashes reported by large fleet drivers were deemed as not serious, only just under one eighth of owner/drivers labeled their crash as 'just little ones that didn't stop me driving'. The indication that owner/drivers are more likely to be involved in serious crashes is supported by insurance company data (similar comparisons by fleet size were not possible).**
- **Workers' compensation claims data seriously understates the extent of work-related injury and disease in the road transport industry due to reporting/claim problems and the fact that most owner/drivers do not take out workers' compensation cover (and a not insubstantial number have no insurance cover whatsoever). The Inquiry survey found that over 15% of owner/drivers had no cover or were uncertain of their cover and that a significant number (15.4%) of small fleet employee drivers were uncertain about their cover. The Inquiry received submissions that some small fleet operators actively discourage workers' compensation claims (urging them to use Medicare etc) - a potentially serious problem. Given the evidence, the Inquiry is inclined to accept this practice occurs although its extent is unknown.**
- **The Inquiry survey of drivers sought to bridge these gaps. It found over a quarter of drivers reported an acute injury or illness, with owner/drivers being far more likely to report minor injury ('usual little things') than small or large fleet drivers. A more disturbing finding was that over half the drivers reported a chronic injury, a response that should be of grave concern to those concerned with the long term health and wellbeing of drivers. Over one third of owner/drivers and small fleet**

operators reported a chronic back injury (the figure for large fleet drivers was 23.5%). On the other hand, more large fleet drivers reported hearing loss (29.4%) than small fleet (19.2%) and owner/drivers (16.2%) though this difference could reflect more testing of the former. Whether the high incidence of chronic back injures is in any way linked to vehicle vibration problems raised elsewhere in the Report demands urgent attention. The incidence of hearing problems may even more directly suggest truck design issues. Alarmingly, seven drivers reported poor eyesight.

- **The survey also assessed driver psychological well being using the General Health Questionnaire (GHQ), an internationally recognised medium for measuring distress. The survey results revealed an overall mean score of 10.3, which is in the high range (a score of 8.59 is relatively normal), with owner/drivers having the highest mean score (11.5) and especially those working on the Hume Highway (mean of 13.1). Nearly 16% of drivers had scores of 14 or more (almost half were owner/drivers), which is deemed to constitute an extreme risk to health. In short, long distance truck drivers operate under considerable stress. Evidence presented to the Inquiry suggesting an abnormally high suicide rate amongst drivers provides additional cause for concern.**
- **Low-level occupational violence is a serious problem for truck drivers. About half the drivers surveyed reported experiencing occupational violence in the past 12 months, most often in the form of verbal abuse or threats, although nearly 1% of owner/drivers and large fleet drivers had been physically assaulted. Owner/drivers experienced more occupational violence (54.5%) than small fleet (45.2%) and large fleet drivers (42.3%). About 20% of all drivers had experienced 'road rage', most at the hands of other road users rather than other truck drivers.**

Aside from these health and safety indicators, the Inquiry collected evidence of serious risks to health and safety, including excessive hours of work and other dangerous practices.

- **As indicated in the recent federal House of Representatives Inquiry, long hours of work and fatigue remain a significant concern in the long haul industry, increasing the risk of collisions and having other health effects. For the years 1993 to 1998 the RTA has estimated that fatigued heavy truck drivers accounted for 80.8 casualty crashes (or 7.6% of total casualty crashes) in NSW and fatigued articulated truck drivers accounted for 58.7 (or 5.6%) casualty crashes. The RTA identified an upward trend in both the numbers of crashes and casualties over time. These concerns are echoed in a recent national survey of fatigue amongst 1,000 long distance drivers undertaken by Dr Ann Williamson and colleagues and benchmarked against an earlier (1991) survey. The survey found there had been increase in the work required of long distance drivers, entailing longer trips and with a reported earlier onset of fatigue. Most drivers did some midnight to dawn driving (when there are far higher risks of crashing), over 20% had exceeded the 72 hour working hour limit in the last week and around a quarter admitted breaking driving hours regulations on every trip. In short, many drivers work excessive and dangerous hours and the situation is if anything, getting worse. Long hours also make it very difficult for drivers to juggle work and family commitments.**
- **A direct consequence of the long hours worked by drivers is resort to stimulant drugs. Drivers use drugs not for pleasure but to combat fatigue and stay at the wheel longer. Although the precise level of drug use in the long distance trucking industry is unknown, the evidence available to this Inquiry leads to a firm conclusion that it is widespread. The recent Peak Hill incident is indicative of the elaborate supply chains that service this use. More to the point, aside from serious long-term health effects, the consequences of drug use by drivers has been graphically illustrated by**

the tragedies at Cowper (NSW) in 1989 and Blanchetown (South Australia) in 1996. Drugs are a long-term feature of the industry and are structured into the work process in a way that can be found in no other occupation (except perhaps prostitution). This situation cannot be permitted to continue.

- **Speeding heavy vehicles are significantly over-represented in crashes. Despite the use of speed limiting devices, speeding by long distance trucks remains widespread, with RTA detection using Culway sites indicating that the proportion of trucks exceeding the speed limit ranges from 30 to 50%, depending on the route/highway. The Inquiry received considerable evidence to show that speeding trucks represented a pervasive and serious safety issue.**
- **In addition to these issues the Inquiry received evidence on a range of other safety issues including overloading of trucks, inadequate load restraint, poor vehicle design/configuration and maintenance, inadequate rest areas and roadhouses, hazardous loads, as well as hazards associated with subcontracting/labour hire.**

These serious safety problems in the long distance trucking industry require urgent attention. However, many of the problems just identified are symptoms rather than the root cause of poor safety performance in the industry. It is to the question of underlying causes that attention now turns.

<u>Commercial Practices and Safety</u>

A key term of reference of this Inquiry - and one that differentiates it from many earlier inquiries - was to investigate the link if any between commercial practices, including the role of customers and consignors, and safety. In particular the terms of reference required the Inquiry to investigate of client and consignor requirements on tendering practices, contracts, methods of pricing, delivery times and lack of client responsibility for driver hours, performance and remuneration.

The Inquiry drew on evidence from a wide range of sources, including numerous (often detailed) submissions as well as examining the evidence presented to earlier inquiries into the road transport industry, commissioned research and relevant evidence from overseas, most notably the USA. Putting this evidence together, the Inquiry reached the following conclusions:

That current commercial arrangements between an array of parties to the transport of freight, including load owners/clients and receivers, consignors and brokers, freight forwarders, large and small fleets as well as owner/drivers have a significant influence on safety. Customer and consignor requirements on price, schedules and loading/unloading and freight contracts more generally, in conjunction with the atomistic and intensely competitive nature of the industry, encourage problematic tendering practices, unsustainable freight rates and dangerous work practices. The situation is accentuated by an oversupply of operators, itself fostered by ease of entry into the industry (in both a financial and regulatory sense), and poor business practices on the part of a significant number of operators. Perhaps the most disturbing signs are clear evidence that many operators are economically non-viable and even large companies have been experiencing problems in recent years (resulting in a series of takeovers, restructures but not ones that appear to be leading to a more stable and viable industry).

Some of the more specific evidence and findings of the Inquiry were:

- **During its own investigation the Inquiry discovered earlier inquiries, coronial inquests and commissioned research into the road freight industry since the 1980s**

that identified a strong association between commercial practices and safety. This included detailed research by Hensher and colleagues during the 1990s that found a clear and significant link between scheduling pressures, unpaid waiting time, insecure rewards and access to work, and hazardous practices such as speeding, excessive hours and drug use by drivers. Unfortunately, apart from the National Road Freight Industry Inquiry (May et al 1984), this evidence appears to have had little impact on policy recommendations or implementation (and the key recommendation of the National Road Freight Industry Inquiry namely operator licensing was enacted but not implemented). Similarly, a recent inquiry into truck safety in New Zealand emphasised the significant role of economic incentives in regulatory evasion.

- **Tendering practices common in the industry contained a number of elements clearly not conducive to safe operation. For example, tenders often took little explicit account of how a task was to be completed or other safety related issues and often quoted 'all in' prices that placed cost burdens on the transport company even for events beyond its control or due to customer inefficiency. Contracts often did not impose/enforce waiting time charges meaning that the customer had no incentive, other than their own convenience, for unloading trucks promptly. Given that local delivery drivers were paid on an hourly basis there was often an incentive to leave long distance trucks waiting. Delays exacerbated pressure to arrive early to beat the queue or race to get to the next job, especially amongst owner/drivers but also fleet drivers.**
- **Very persuasive evidence was presented to the Inquiry that there are serious questions in relation to the ongoing economic viability of many operators, if not the industry more generally. Detailed analysis by Dean Croke found that for most of the 1990s returns to not only small to medium operators but also large operators did not provide an adequate rate of return for long term sustainability and this, in turn, was incompatible with safe operation. Other evidence as well as submissions from owner/drivers, small fleet operators and more unexpected sources like insurers supported this interpretation. Low freight rates were widely seen as a direct threat to safe operations because they encouraged pushing the margins (cuts to maintenance, more trips in given period, speeding etc). Low freight rates were seen to originate from:**
  - **the pressure of customers in a strong bargaining position (and without the restraint of any accompanying OHS responsibilities) exacerbated by expectations of freight-rate cuts fostered in conjunction with the GST(see evidence in the Report)**
  - **intense competition amongst transport operators exacerbated by the ongoing relatively easy entry of new and often heavily indebted operators who in their desperation to survive will accept almost any rate for work and the use of pyramid subcontracting by larger firms to capture work at reduced rates.**
  - **poor business practices on the part of many (especially small) operators who focus on cash flows rather long term sustainable returns (though note the limited bargaining power of such operators may also make it difficult for them to charge more 'realistic' rates).**
  - **a regulatory environment where failure to abide by safety and other standards is not only possible but may actually deliver an economic advantage.**
  - **externalities (such as the full cost of the resulting injuries, deaths and illness) and the absence of competitive neutrality (for example, in terms of road/rail infrastructure investment/cost recovery and regulatory requirements) act as a hidden subsidy to freight rates.**
  - **the use of performance base payment systems (including industrial agreements) and widespread evasion of minimum award entitlements for drivers that**

effectively encouraged illegal driving practices and enabled cost savings to be made (see below).

- **job insecurity fears of both employee and owner drivers make it more likely that they will accommodate to dangerous work practices rather than registering complaints to transport companies or customers.**

- **Research by Williamson et al, and the Inquiry's own survey, provide compelling evidence of an association between tight schedules, delivery time bonus/penalties and performance-based payment systems (eg kilometer-based rates) and both chronic injury and the propensity of drivers to engage in dangerous practices (such as speeding and excessive hours). Yet bonus/penalty systems remain common (if not in the largest firms) and if anything payment-by-results systems have become more widespread over the last 10 years - a consequence in the view of this Report of operator attempts to remain viable in a climate of low returns and client pressure.**
- **Detailed evidence presented to the Inquiry on the US trucking industry, by Professor Michael Belzer, from the Trucking Industry Centre at the University of Michigan indicated that deregulation of the industry from the 1970s had led to intense competition which benefited clients but imposed serious costs on the industry itself. These included increased bankruptcy amongst small carriers and greater business volatility more generally, reduced freight rates (especially for larger manufacturers and shippers) and a substantial decline in the wages of truck drivers. Further, while environment and safety laws were retained (and indeed strengthened in areas like the carriage of hazardous substances and drug testing of drivers), economic de-regulation exacerbated risks to drivers and public road users more generally. As in Australia, Belzer found the result was strong incentives to violate rules designed to encourage safe operations. Belzer also identified problems endemic to the Australian trucking industry, notably unpaid waiting time, low pay (he labelled trucks as sweatshops on wheels) and excessive hours of work. Further research by Belzer of the second largest trucking company in the USA demonstrated a clear link between pay levels and safety/crashes. Belzer et al found that the more wasted (ie unpaid) time drivers have the more likely they are to squeeze too many hours into a day, forcing schedule irregularity and excessive hours. Belzer argued that the consequent safety risk could be reduced by charging shippers and consignors for delay time and paying drivers for this time so they log it on as duty (measures to reduce driver turnover were also advocated). These findings are consistent with many submissions made to this Inquiry and earlier Australian research by Hensher and colleagues.**
- **In sum, commercial/ industrial practices affecting road transport play a direct and significant role in fomenting hazardous practices. Until such time as these issue are addressed there is unlikely to be any significant improvement in safety performance across the industry.**

<u>Extent of Proper Enforcement of Driving Hours, Speeding, Drug Use etc</u>

A key term of reference for the Inquiry was to examine the adequacy of enforcement practices with regard to critical safety issues.

- **Despite the fact that long distance drivers are legally permitted to work hours that would be regarded as excessive in almost any other occupation (ie 72 hours per week) evidence presented to this Inquiry showed that breach of driving-hours regulations was widespread. Further, the logbook system used to monitor hours was widely abused, a finding that echoes earlier inquiries. Limitations with the logbook identified including fraudulent entries, the keeping of two books, manipulation of the 100-kilometre trip requirement for a logbook to be kept, and the low and insufficiently differentiated fines imposed for logbook offences. Police expressed concern that the difficulty of enforcing logbooks had been made even more difficult**

by the introduction of more flexible fatigue management regimes. Police also expressed concern at civil liability in situations where in interests of the safety of other road users they would want to order a fatigued driver not to proceed until they had rested but the freight was perishable. All these issues demand attention.

- **As with driving-hours regulations, there is evidence that present enforcement activities are finding it difficult to counter widespread speeding by trucks. Both the RTA and Police expressed concern at recent trends in the incidence of speeding and the difficulty of both detecting and prosecuting this. The NSW Police reported a substantial increase in the number of infringement notices (from 6,767 in 1998 to 8,644 in 1999) and widespread use of illegal radar detectors as evidence of the inability of sections of the industry to set realistic schedules and the problem of existing sanctions curbing behaviour. The RTA has employed Safe-T-Cam at 21 sites across NSW to detect speeding and other offences, and while this has won widespread support (with calls to extend it other states), attempts to evade the system have been at least partially successful. In the past 12 months 34 NSW drivers and 85 interstate drivers had their privileges suspended for avoidance behaviour. Like a number of other states, NSW has also adopted the 'three strikes and you're out' scheme that targets persistent offenders, and by providing for the cancellation of truck registration, is designed to focus on operators not merely drivers. While the scheme has had a measure of success, there are serious problems in relation to enforcement on interstate and especially federally registered trucks because not all states operate the 'three strikes' scheme. Evidence of this is detailed in the section on coordination. At this point the Report would observe that existing enforcement practices in relation to speeding, while more effective than those in relation to driving hours, are failing to curb a serious level of offending by sections of the trucking industry.**
- **Enforcement practices in relation to the use of stimulant drugs by truck drivers largely rely on on-road detection and, as police giving evidence to the Inquiry made clear, this often represents a time-consuming task only likely to detect some of the most extreme cases. The Inquiry received disturbing evidence about the ready supply of drugs and measures used to disguise drug use, including the 'removal' of drugs and other incriminating evidence by tow truck operators from heavy vehicles involved in collisions. The recent police raid at Peak Hill indicated the potential benefit of targeting supply chains though regular raids of this nature would be required to have a significant impact (and even then the wide array of drug supply options behoves caution). Overall, existing enforcement activities appear to be having a limited effect. More systematic attempts to prevent drug use including random testing of drivers at particular companies or on particular routes may have some effect although the Inquiry's admittedly limited investigation of mandatory drug testing of drivers in the USA identified a number of problems. Action against companies that either supply or tacitly accept drug use amongst their drivers might also have some value. However, it is the view of this Report that only after addressing the underlying reasons for drug use, are more targeted enforcement measures such as those just discussed likely to succeed.**
- **In relation to the overloading of trucks and the use of load restraints a number of problems were identified such as the absence of weighbridges in number of key locations and police difficulties with more complicated load restraint requirements.**
- **The Report identifies a number of general problems with current enforcement practices under road transport legislation. In particular, despite some efforts to target other parties affecting safety in the long distance trucking industry, existing enforcement remains too driver-focused. While truck drivers have legal responsibilities that must be met, focusing enforcement activities at the driver fails to address the root cause of many serious safety problems, presumes this action can alter behaviour (when there are strong pressures to evade), and represents a 'bottom**

of the chain' mentality. Evidence presented to the Inquiry makes it clear that even those involved in on-road enforcement, such as highway police, are only too aware of this limitation.

- **In recent years the NRTC has sponsored an attempt to address this problem through the introduction of 'chain of responsibility' provisions into road transport legislation. Like other states, NSW amended its laws in 1999 to accommodate this change. There is strong support for this principle within the industry and the concept is a good one long established in areas like environmental and OHS law. At present the chain concept only applies to a limited array of problems (fatigue in NSW), the penalties for serious offences, while an increase on previous road transport legislation, are minuscule in comparison to those found for OHS and environmental legislation, and there have been few prosecutions (none in NSW). Many submissions expressed the hope that 'chain of responsibility' would change 'safety culture' in the industry it is the view of this Inquiry that such a shift is unlikely in the near future. Even making these provisions work in the medium to long term will require a significant broadening and strengthening of the legislation, retraining those charged with enforcement, and a serious commitment to prosecution. While 'chain of responsibility' has potential, the industry's problems are too urgent for reliance to be placed on it in the immediate future (ie the next five years). Indeed, it astounded the Inquiry that concepts so long accepted in OHS and environmental law have taken so long to find their way into the road transport industry and then only in what can only be described as a muted form.**
- **The NSW Occupational Health and Safety Act covers the road transport industry and contains arguably the most effective remedies for dealing with very serious offences by operators, consignors or clients. However, no real effort has been made by the responsible agency, WorkCover, to investigate or prosecute such offences even though this has support not only from the RTA but the union, industry associations, insurers and other parties. As this Inquiry has shown, there is evidence of a depressingly large number of cases where there are indications of corporate criminality warranting serious investigation. It should be noted that OHS agencies in other jurisdictions like Victoria are becoming more active in undertaking prosecutions in the trucking industry.**
- **Evidence presented to the Inquiry, supported by submissions from drivers, the union and the NSW Road Transport Association clearly show that ensuring drivers are paid minimum award rates is a crucial safety issue. However, present award enforcement measures in NSW and elsewhere is largely complaint-based and, as far as the Inquiry could determine, has not prevented widespread evasion. A better-resourced and more proactive approach to award enforcement is required.**
- **Like the federal inquiry into fatigue, this Inquiry also received evidence of industrial agreements (AWAs) that effectively sanctified what can only described as an unsafe system of work. Again, as the federal fatigue inquiry indicated, this issue requires urgent attention.**
- **The inquiry received a number of submissions on technological devices to aid enforcement including the use of tachographs (already mandatory in a number of countries but opposed by the industry here), driver-specific smart cards, and global positioning technology. Some of these devices have potential but past experience indicates that of themselves they are unlikely to work, as some sections of the industry have proved adept at disabling or modifying a succession of technological devices (like speed limiters) over many years. Tachographs may prove useful as an additional auditing device but only in conjunction with a new compliance system that addresses root causes not symptoms.**
- **In sum, if 'proper' enforcement means enforcement activities that effectively deter dangerous practices, then it must be judged that without suggesting current practices have no effect and recognising some positive recent initiatives, there are**

serious deficiencies in current enforcement regime. These deficiencies require urgent attention. In particular, without entirely foregoing existing driver sanctions, there is need for more vigorous enforcement activities that target the parties and practices (in relation to scheduling, remuneration and the like) that are the root causes of dangerous practices like speeding, excessive hours at the wheel and drug use.

Current Forms of Regulation and Which Model is Most Appropriate

The Inquiry was also asked to examine current forms of regulation and evaluate which types of regulation were most effective. A critical issue here was considering the relative merits of external regulation by state agencies and internal or self-regulation involving collaborative ventures between agencies and the industry itself. The former include the prescriptive requirements of road transport and industrial relations legislation, plus chain of responsibility and the mixture of performance and prescriptive standards in OHS legislation, aspects of which were described in the last section. The latter include accredited or self-audit management systems such as TruckSafe run nationally by the ATA and Transcare (a more recent Victorian initiative of the Victorian Road Transport Association with the support of WorkCover Victoria). Other examples of collaborative approaches to internal regulation are a number of fatigue management regimes (Transitional Fatigue Management Scheme, Fatigue Management Program) that provide more flexible hours arrangements than the standard hours regulations where companies can demonstrate they can manage driver fatigue according to an excepted set of criteria. Finally, the use of voluntary codes, such as that recently proposed nationally, can be seen as another form of self-regulation.

In evaluating the relative merits of external and self-regulation, the Report found the following:

- **In the course of investigation the Inquiry became aware of number transport companies (with some notable exceptions, mostly medium to large firms) that have made assiduous efforts to manage driver fatigue and other safety-related issues. Their efforts should be recognised and applauded. The problem is that these operators have to be viewed as exceptional rather than typical of industry practice.**
- **A number of the collaborative ventures appear to have merit although the numbers involved in most are either too small (such as the Fatigue Management Pilot scheme being trialed in Queensland) or the initiative too recent (such as TransCare in Victoria) to make definitive judgements.**
- **The major exception is TruckSafe that has around 350 accredited members and has been operating, under various titles, for about 10 years. TruckSafe attracted a large number of both positive and negative assessments in submissions. Opinion was divided not only amongst drivers and operators but also insurers (although by far the largest did favour TruckSafe), regulators/enforcement agencies and other parties. On the positive side TruckSafe has indicated that the industry is willing to take a more systematic approach to safety, driver wellbeing and lift the standard of existing practices. On the negative side, TruckSafe in no way amounts to a comprehensive OHS management system (even many of its supporters believed it needed to be developed further to take in issues like subcontracting – and moves are afoot in this regard) and concerns were raised about the auditing process. On balance, this Report would conclude that TruckSafe has a valuable role to play but it would achieve more credibility if it involved parties beyond the ATA and if it was subject to random rigorous audits by government inspectors (in addition to an improved version of the existing audit process).**
- **However, it is also the firm view of this Report that the TruckSafe accreditation system will not and cannot change the 'safety culture' within the industry as whole.**

During its existence TruckSafe has been unable to capture more than a small fraction of operators, and while this includes many (though by no means all) large operators its coverage of the overall long distance trucking fleet remains small. With some notable (but impressive) exceptions, the great majority of owner/drivers and small fleets show no interest in TruckSafe (and many the Inquiry spoke to were hostile and dismissive). Nor (even ignoring companies losing accreditation) is there a pattern of growth discernible that makes it likely that the coverage of TruckSafe will expand in the foreseeable future to a level that would raise general standards. Suggestions that incentives (such as discounts to insurance premiums) could be used to expand the coverage of TruckSafe (or other schemes like Transcare for that matter), do not, in the view of this Inquiry, represent a solution to this problem for a number of reasons. First, the offering of such incentives was opposed by a number of insurers (including at least one supporter of TruckSafe) as not being justified on the basis of performance by TruckSafe accredited firms (the largest insurer disagreed on this score). Second, such incentive schemes are known to be susceptible to manipulation of claims incidence (without any comparable changes in the incidence of claimable incidents). Third, insurance incentives will not influence the large number of predominantly small operators and owner/drivers who are under-insured (even non-insured) or who push the regulatory envelope even though these are precisely the ones who most need to meet accreditation requirements. Fourth, the incentive approach is liable to be defeated in practice by the elaborate subcontracting networks that already exist (by enabling firms to disguise risks/claims through outsourcing). The most direct and arguably effective way to achieve comprehensive and higher levels of performance through accreditation is to make it mandatory.

- **The Inquiry also looked at voluntary codes of conduct but has come to the view that, at least as far as the transport industry is concerned, these devices are essentially impractical for the following reasons. First, voluntary codes are not a new idea in the industry having been discussed and proposed since the late 1980s (and arguably far earlier if you include the agreement on payments to owner/drivers that resulted from the Razorback protests of the late 1970s). The question then becomes if these measures have failed to be implemented or to be effective in the past, what is going to make another attempt any more successful? Second, the reasons these codes have failed are not hard to find in terms of the structure of the industry and other issues already highlighted in this Report. The intensely competitive, fractured and volatile nature of the industry means that, as has occurred in the past, enough operators will break ranks to place pressure on others and a snowball effect will progressively unravel the agreement within a relatively short space of time. It is noteworthy that even amongst majority of drivers, including owner/drivers, and small fleet operators, there was severe skepticism verging on complete disbelief in the prospects of self-regulation working in the road transport industry. In the view of this Inquiry, voluntary codes in this industry amount to little more than symbolism and will not effect significant changes in safety.**
- **Further, efforts aimed to improve safety in the industry must recognise the influence that load owners and consignors exert in relation to freight rates, scheduling and waiting periods spent waiting to load or unload. Thus far, none of the collaborative/self-regulatory compliance regimes or voluntary codes address this dimension although the Inquiry understands the ATA has recently held discussions with the ARA on mutually agreed principles. The TWU has proposed codes of conduct to retailers but these are by way of a signed agreement rather than a voluntary code.**
- **Transport operators should be encouraged to take 'internal' responsibility for the health and safety of drivers and members of the public using or living close to roads. However, it is the firm view of this Report that this can only be achieved by**

stringent, rigorously enforced external regulation. In this industry there is ample evidence over a long period that self-regulation amounts to little more than a deregulated 'law of the jungle' where ethical operators are punished by those prepared to evade the most basic legal standards relating to driving hours, rest breaks, speeding, overloading and the like. Only mandating and enforcing improved safety standards through external regulation is likely to change 'cultures' or set of attitudes and practices that have been shown to been entrenched over a long period of time.

- **A number of submissions called for 'smart compliance' or the attempt to maximise enforcement impact given limited resources. The ATA argued that schemes such as TruckSafe provided the opportunity to concentrate resources on operators making no obvious effort to improve OHS through accreditation or other voluntary schemes. The Report accepts that enforcement processes can differentiate and adapt to meet the different demands of those operators with an OHS management system and those without. This depends on those voluntary systems being externally vetted to ensure they meet the purported standards in practice (such as the problem of 'paper compliance'). As yet there are insufficient guarantees in this regard (and changes are therefore needed). Further, the limited coverage of TruckSafe and other schemes means that even if these conditions were met the resources freed up are likely to be quite limited at the present time. If a proactive approach to lift operator standards generally was introduced that placed the burden of compliance far more heavily on the operator, then a differentiated approach might be sustainable. The Inquiry makes a number of recommendations in this regard with one being mandatory operator licensing (see below). At the same time, the Report accepts the more general point about the need for a more strategic compliance program. Other recommendations on this are identified below (with more detailed observations in the main sections of the Report)**
- **As indicated in the section on enforcement, the existing regulatory package needs to be reorientated so that it more effectively addresses the full range of parties and commercial/industrial arrangements underpinning unsafe driving practices. This includes making significant use of OHS legislation, especially in relation to higher order of seriousness or systemic offences. As has been shown in other industries, this legislation covers a wide range of parties, has substantial penalties and includes the performance standards that encourage employers and others to adopt internal responsibility. As the level and reliability of payments made to both employee drivers and owner/drivers can be shown to affect safety, these need to be addressed in a proactive and serious manner. The recommendations below address these issues.**
- **Further, the minimal OHS standards and poor business practices of many existing operators, and the ease of entry of similarly deficient operators, need to be addressed in a proactive and comprehensive manner. In 1984 the federal National Road Freight Industry Inquiry, which more than any subsequent inquiry prior to this one, examined the links between commercial practices and safety, called for the introduction of operator licensing and federal legislation to achieve this was enacted but never implemented. Put bluntly, road freight is the only mode of long distance transport where no form of operator licensing exists in Australia (see for example rail, air and sea transport). All that is needed is a truck and a truck driver's license or licensed driver. The absence of operator licensing may be acceptable in some businesses like a clothing shop where the consequent risks to the public are minimal but it is not acceptable where the lives, health and wellbeing of hundreds if not thousands (counting serious injuries) of Australians are put at risk. Moreover, as the rail freight industry was at pains to point out, the demonstrably more dangerous road freight industry is able to operate without a license while rail operators must undergo a rigorous form of operator licensing. This situation can hardly be justified**

on grounds of economic efficiency/competitive neutrality let alone driver and public health and safety. A number of other countries such as the UK and New Zealand already have an operator licensing system. The recent federal Inquiry in fatigue in transport recommended that mandatory operator licensing be looked at by the year 2002. Amongst the considerable number of parties raising the issue of accreditation to this Inquiry there was virtually a unanimous view that some form of accreditation was needed but opinions differed as to whether it should be mandatory or voluntary. As already indicated, available evidence indicates reliance on a voluntary system to fill this gap in the industry is wishful thinking. This Inquiry can see no justification in delaying this matter further. It recommends immediate steps be taken to introduce a national licensing system that requires operators to demonstrate basic business skills, a business plan, knowledge of OHS (including fatigue management) and other essential elements before they can gain entry to the industry. License fees and ongoing regular audits of operators to retain their license should be designed to recover costs of administering the system and providing appropriate educational/certification packages.

- **In sum, this Report strongly recommends that external regulation be used to lift the baseline of safety performance across the industry and to encourage operators to improve their internal management of OHS. Voluntary schemes such as TruckSafe, TransCare and the Queensland Fatigue Management Pilot Scheme should be used to facilitate operators achieving higher standards of OHS performance. That is, they represent a potentially important adjunct to the regulatory system but not a substitute for vigorous and targeted external enforcement.**

<u>Coordination and Resourcing of Regulatory Bodies</u>

The last major term of reference of the Inquiry was to assess the coordination and resourcing of regulatory bodies. In terms of regulating road safety there are two distinct but overlapping areas of coordination. First, there is the coordination between different regulatory agencies within each jurisdiction, in this case New South Wales, a responsibility for trucking safety (most notably the Police Force, RTA, WorkCover and the EPA but also arguably including the courts [including the Coroners Court]). Second, since the long haul trucking industry moves beyond the confines of any state or territory and is governed by a national framework there is also the question of coordination between jurisdictions and with national bodies (most notably the NRTC). Investigation by this Inquiry indicates there are serious problems in relation to both areas of regulatory coordination. The Inquiry was also asked to examine whether existing regulatory bodies were sufficiently resourced. This issue overlaps to some extent with the coordination issue (as it depends on which agencies or arrangements will achieve the most effective use of available resources). Hence, it will be dealt with under this heading rather than separately.

At the level of coordination of agencies responsible for trucking safety in the state of NSW a number of serious problems were identified.

- **There is clear evidence, overwhelmingly supported by submissions to the Inquiry (including submissions from agencies themselves), that there is, at present, inadequate coordination amongst regulatory bodies responsible for safety in the long haul road transport industry that needs to be addressed. Although there is a degree of information sharing and collaboration between the NSW Police and the RTA this cooperation could be enhanced. With regard to the other two agencies with responsibilities for some health or safety aspect of long haul road transport, namely WorkCover and the Environmental Protection Authority the latter had some dealings with the RTA but WorkCover has remained largely outside the loop. WorkCover preferred to take a residual role at best, seeing the RTA as the lead**

agency. In support of this view, WorkCover also pointed to a number of technical problems in relation to the NSW OHS Act. It is the view of this Report, backed by an independent legal assessment by an expert in OHS law, that the latter difficulties are not insurmountable (and one relatively minor amendment would assist in this regard). Further, there are compelling reasons why OHS legislation must be brought into play in the industry if a reasonably rapid change in safety performance is to be achieved. Put simply, the OHS Act contains general duties applying to a range of parties, an array of penalties more likely to have real deterrent value, and a proven record of successful implementation. This legislation can achieve now and better some of the key objectives of 'chain of responsibility' legislation. In Victoria, these options are now being actively explored (further, the Victorian Road Transport Association has worked to bring coroners into the loop). By getting a more balanced mix of road transport and OHS legislation and greater cooperation amongst the agencies a number of the serious limits with the current approach can be addressed.

- **Drawing the foregoing points together, there is a pressing need to better coordinate the implementation of road transport, OHS, EPA and industrial relations laws, and the various bodies responsible for them, in both an operational and policy sense. Each of these laws and agencies has an important role to play and to achieve an optimal mix of compliance activity but as yet there is insufficient dialogue and no mechanism to achieve this. A more coordinated approach would not only yield a better mix but also offers the potential for collaborative campaigns, blitzes etc. A mechanism to achieve this, and address other problems identified in this Report, is recommended below.**
- **A more coordinated approach will have advantages in terms of increasing the impact of measures, evaluating their effectiveness and getting the optimal impact from a mix of information dissemination, local blitzes, high-chain prosecutions and the use of publicity. The Inquiry received a number of submissions, including some from industry representatives as well as insurers, the TWU etc, to indicate that current resourcing of enforcement by the police, RTA and industrial relations inspectorate was inadequate. The Inquiry accepts these submissions but has tried to indicate in what areas resources should be prioritised.**

In terms of national coordination too, a number of problems or sources of concern were identified

- **Since the early 1990s the National Road Transport Commission (NRTC) has been responsible for coordinating national improvements in the economic/cost efficiency of road transport and safety, including promoting a consistent national framework of road transport legislation. Almost all parties acknowledged the advantages of a national approach to regulating the trucking industry, however, a number of parties heavily qualified this or were highly critical of particular developments. The criticism emanated from a wide range of interests including drivers, some industry associations, insurers, motoring organisations, academics and the TWU. The main criticisms made were:**
  - **The re-configuration of trucks by length, size, capacity etc was primarily dictated by commercial advantage and insufficient consideration had been given safety consequences for drivers or the community**
  - **That in the mid 1990s a longer span of driving hours had been considered by the NRTC which was viewed by the NRMA and several other bodies as nothing short of alarming. That the issue was even raised did nothing to imbue confidence in the NRTC's safety agenda.**
  - **That these reforms failed to take sufficient account of differing road conditions including terrain, population and the level of road usage in specific states which,**

for example, might translate into differences in terms of acceptable vehicle configurations and enforcement levels.

- **The problems posed when enforcement of trucks travelling in one jurisdiction depended on another jurisdiction given disparities in compliance practices (see for example discussion of the 'three strikes' scheme below).**
- **That the national load restraint code developed by the NRTC was too complex to be readily enforced by Police.**
- **That staff of the NRTC were largely economists and lawyers who lacked expertise in OHS and that, until recently, safety had not been accorded sufficient weight in the reform agenda in comparison to economic/commercial considerations and industry needs.**

- **Criticism of a (relatively small) national body with the difficult task of dealing with multiple state agencies to achieve co-ordinated outcomes is hardly surprising, and consequently should be assessed cautiously. Some issues (like the load restraint code) might be seen as teething problems. The NRTC pushed the concept of 'chain of responsibility'. It can hardly be blamed for limited enforcement although it might be argued this approach should have been a priority when the body was established and insufficient attention was paid to successful models already found in relation to OHS and environmental law. The NRTC has also pushed the concept of fatigue management, widely accepted as a positive step in the industry, and has recently sponsored important research with regard to this. On the other hand, it is fair to say that there have been significant gaps in the NRTC trucking safety agenda, both in research and policy terms (such as considering the impact of commercial practices or detailed analysis of the underlying reasons for fatality/crash trends). Further, the difficulty of juggling both economic/commercial and safety considerations has not enhanced the NRTC's credibility at least in the eyes of a number of key groups.**
- **The RTA has identified a extremely serious flouting of road rules by trucks registered under the Federally Interstate Registration Scheme (FIRS) who were effectively evading the 'three-strikes' scheme. While FIRS trucks constitute only 2% of the national heavy vehicle fleet as at 25 May 2000 they had recorded 740 strikes or 47.1% of the total (NSW registered trucks recorded 267 strikes or 16.9% and Victorian registered trucks 335 strikes or 22.6%). Evasion is further facilitated by the fact that stamp duty is not levied on the transfer of FIRS vehicles so an operator can shift registration of their truck to avoid a sanction at little cost. A number of requests by the NSW Minister for Transport to repeal FIRS legislation or make it possible for states like NSW to take direct action against operators met with no response from the Commonwealth although the Inquiry understands the matter is now being addressed. The belated response to this problem hardly adds to the credibility of a national regulatory system.**

<u>Recommendations: Industry Code of Practice</u>

The Report finds that a combination of commercial/industry practices and structural features of the road transport industry constitute a significant underlying reason for unsafe practices and the industry's poor overall safety performance. It is the view of this Inquiry that past intervention has failed because it focused on symptoms of the problem (such as driver behaviour in relation to drugs, speeding, hours at the wheel etc) rather than the commercial/industrial practices that encourage unsafe behaviour. Given a choice between economic survival/keeping their job or obeying the law it is only too clear that many drivers and operators have opted for the former.

The key recommendations of the Inquiry are to establish a Code of Practice for the long haul road transport industry, including four key elements and a number of supporting elements. The four key elements are:

First, there is a pressing need to address a serious coordination problem amongst regulatory agencies responsible for safety in the long distance trucking industry to achieve a more coordinated, strategic and effective compliance program. The preferred recommendation of the Inquiry is that a Long Distance Trucking Safety Authority be established in New South Wales with the responsibility of coordinating safety strategies in relation to the industry and undertaking its own investigative and compliance activities. The Authority should include a small inspectorate to undertake targeted compliance programs under the NSW OHS Act. Inspectors will also have powers under Road Transport and Industrial Relations legislation. The Inquiry recognises that, while a statutory authority is its preferred option, another structural arrangement may achieve the same outcome, namely establishing a Permanent Taskforce chaired by the Motor Accidents Authority and with representatives of all the relevant government agencies to carry out the role identified in relation to the Authority. If the latter option is pursued then suitable safeguards (including meaningful benchmarks and reporting requirements) should be put in place to ensure the Taskforce can and does carry out its task of facilitating a more coordinated and proactive approach to regulation. Further, if the Taskforce rather than Authority option is pursued then suitable arrangements will need to be made for administering the licensing system, inspectorate and other compliance measures proposed below. As the New Zealand experience all too clearly shows, if the compliance regime is not suitably resourced and implemented then it will amount to little more than tokenism.

- **Second, the Authority will be responsible for administering a compulsory licensing system covering operators (including owner/drivers), freight forwarders, consignors and brokers/agents. The licensing system will ensure all operators meet basic business skill, OHS and other performance standards so they can undertake their tasks safely and so other parties, like consignors and agents are fully aware of their OHS and public safety responsibilities.**

- **Third, the existing logbook system should be abolished. In its place it should be required that all trucks undertaking one way trips of more than 100km in NSW carry a Safe Driving Plan or Safe Driving Method Statement with copies of the plan to held and signed off by both the transport company and the client/consignor. This requirement will apply to any truck travelling within NSW or trucks crossing into NSW from other states that travel more than 100km in NSW. Failure to comply with the Safe Driving Plan or Safe Driving Method Statement requirement is to be deemed as a breach as of regulation in its own right as well as prima facie evidence of a breach of the general duty provisions of the NSW OHS Act. The components of the Safe Driving Plan or Safe Driving Method Statement are detailed in the Report.**

- **Fourth, minimum award rates to employee drivers and safety-based payments for owner/drivers are essential for long-term safety in the industry. To address these overlapping issues there two sets of recommendations are made. First, it is recommended that additional resources be allocated to award enforcement in NSW and that more proactive forms of enforcement be undertaken. Further, the NSW government should seek the collaboration of other jurisdictions in matching measures. Second, that minimum legally enforceable 'safety rates' be established for owner/drivers to be decided by panel of the Industrial Relations Commission of NSW from applications made to it by the Long Distance Trucking Authority. Further, it is recommended that the NSW government seek corresponding measures from other jurisdictions.**

Other recommendations in connection to the Code of Practice are:

- **Prohibit bonus/ penalty payments in relation to delivery time/scheduling**
- **Protect police and other authorised officers from civil liability in cases where a vehicle had been 'grounded' in the interests of public safety**
- **The expression "while they are at the employer's place of work" should be removed from section 8(2) of the OHSA 2000 (NSW), so that it resembles section 22 of the Victorian OHS Act. Similar amendments should be made to section 9 of the OHSA (NSW) (the self-employed person's duty).**
- **Protection for contractors and drivers who refuse to engage in unsafe working practices**
- **That the RTA involves industry associations and the TWU in developing and implementing an action plan on the upgrading of parking bays/rest areas. Measures for enhancing the quality/suitability of food, comfort and rest afforded by roadhouses should also be explored.**
- **That current driver training methods should be evaluated with a view to identifying deficiencies and to also to provide a basis for progressive enhancement of driver competencies. Driving a truck should be regarded as a life long learning experience, with periodic re-testing and upgrading of skills.**
- **That WorkCover NSW take measures to address the lack of knowledge and access to workers' compensation amongst long haul truck drivers, by raising awareness of entitlements and the need to have some insurance cover in the case of owner/drivers. Further, WorkCover should investigate complaints of active claim suppression by some companies as well as undertaking random audits designed to detect such illegal practices.**
- **There is a need to improve road user understanding of sharing the road with heavy vehicles, including those issues most relevant to safety such as overtaking/length, turning characteristics of long/articulated vehicles and breaking distances. The addition of these issues in driver education and license testing should be considered as well as support for programs such as the National Sharing the Roads with Heavy Vehicles scheme.**
- **The RTA should investigate heavy vehicle mass, configuration and vibration concerns raised by Dr Arnold McLean and others and report its findings to the Minister for Transport.**

1. INTRODUCTION

Measured in terms of freight rates, timeliness, geographic spread/distances travelled and the vast array of diverse goods (from steel girders, timber or car parts to live cattle or mangoes) moved to docks, markets, warehouse, stores, factories and other workplaces, long haul road transport in Australia achieves an outstanding level of economic efficiency. Long distance trucking makes an often under-estimated but very substantial contribution to the Australia economy and society. The transport and storage sector as whole comprises about 6% of Australia's GDP, with the GDP of road transport amounting to almost $14.7 billion in 1997 (Department of Communications, Information Technology and the Arts, 1999). As in most industrialised countries, road transport is by far the dominant mode of internal transport. In 1992 the Bureau of Industry Economics estimated that the direct or indirect contribution (per $100 of final output) of road transport to produce certain products ranged from as low as $2.64 for machinery up to $6.25 for petroleum and coal, $6.70 for milk and meat, and $8.51 for non-metallic mineral products (Department of Communications, Information Technology and the Arts, 1999:3). Though comprising only a small component of road transport, the long haul road freight sector has an economic and social influence well beyond its size. Any serious disruption to long haul trucking would have nothing short of disastrous effects on the Australian economy (which is not to discount the critical role played by rail freight).

The social significance of road transport is no less important. Long haul trucks play a vital but often invisible part in the lives of every Australian. For example, few Australians visiting their supermarket are aware that of the vast array of products on the shelves, much has been transported long distances by road. As with products for other clients like manufacturers, goods have often been delivered to meet tight schedules; to minimise warehousing requirements (as part of the growing use of Just-In-Time practices) or to ensure product freshness. Thus, for example, those living in Sydney and nearby cities or towns are accustomed to have tropical fruit on their supermarket or fruit-barn shelves that was picked less than 24 hours before in northern Queensland. A thousand kilometres further south in Melbourne produce from the same origin has arrived in less than 36 hours after picking/packaging.

In winter tomatoes grown in central Queensland are trucked south while asparagus from Victoria is shipped north. In summer, cherries and other stone fruit are available at all ends of the continent alongside tropical fruit. The transport network has, in conjunction with refrigeration and the introduction of new varieties, extended the season of particular products. Fresh fish and a wide variety of other perishable goods are available all year round, often being shipped vast distances. Elaborate logistical networks between growers, freight forwarders and loading agents, supermarkets and other buyers, transport companies and drivers (including owner/drivers) assures both rapid movement to diverse destinations and makes use of climatic differences across our vast continent to ensure a wider array of fresh produce and extended seasons. Rationalisation in the meat and dairy industries has meant that these products too must often travel long distances. Likewise, processed food products also move large distances (from canned fruit and juice manufactured in Brisbane to breakfast cereals and food-bars made in northern Victoria. The achievement of this vast logistical and transport network can readily be appreciated if you were to simply compare the array of fresh fruit and vegetables available to Australian consumers in mid-winter to those available to their Northern European counterparts in autumn (let alone winter).

As already noted, the achievements of the road transport industry are by no means confined to the movement of fresh produce or goods for supermarkets. These examples were chosen because they most readily demonstrate the vital everyday contribution that the long distance trucking industry makes to the community. Nevertheless, similar illustrations could be

provided in relation to the movement of steel products, white goods, furniture, car parts, chemicals and a host of other products that are moved rapidly over the long distances separating major urban centres in Australia as well as the network of regional centres and country towns.

Contrary to popular images of the industry, the long distance component only accounts for around 20% of road freight movements in Australia (ie 80% of the total road freight tasks involve trips of less than 100 kilometers). Many truck owners use them in connection to their principal business which is not transport (such as the delivery of goods they have produced) and do not seek to use them as a means of earning income by undertaking paid freight tasks. Further, most road freight movements are short distance. According to the ATA (written submission, ATA page 10) about half of road freight services occur within urban areas and most are intrastate. Indeed, the 1000 million tonnes of freight moved by road each year travels an average haul of 90 kilometers. The other mode of transport that most directly competes with road transport is rail. Despite recent efficiency improvements and growth in absolute tonnage moved, rail freight is largely confined to bulk commodities like coal (again mainly intrastate) and has been progressively losing its overall share of the total land freight task to road transport. The other major transport modes have little bearing on road transport. Sea freight is mainly used for moving bulk commodities over long distances (ie interstate or overseas) while airfreight focuses on moving high value or urgent goods over long distances. Overall, road transport accounts for a substantial and increasing component of land transport.

These achievements of the long distance trucking industry come with a cost. These costs include safety problems facing drivers and the general motoring public. In the early 1990s the total number of fatalities involving articulated vehicles on Australian roads declined from the horror years of the late 1980s (epitomised by the tragic Cowper and Clybucca smashes in northern New South Wales) and has remained at roughly this level since. Though not an insubstantial achievement given the expansion of the industry, incidents involving articulated vehicles still account for a significant and disproportionate number of all road fatalities (only in about a quarter of these is the truck driver held responsible) and truck driving remains one of the most dangerous occupations. At Tarcutta on the Hume Highway between Melbourne and Sydney the steady addition of names to a memorial wall to drivers killed on the job (a rare if not unique monument) provides testimony to the risks drivers confront on a daily basis. Despite this ongoing toll, on-road incidents resulting in death very rarely lead to detailed investigation let alone prosecution of employers or other parties that might have had a responsibility (and despite Victorian research indicating frequent there is prima facie evidence of corporate criminality in a large number of cases).

In other industries like mining the death of four or more miners in a single incident typically leads to a major official investigation or royal commission. However, there has never been a similar inquiry into whether there are systemic reasons for the dozens of truck drivers killed on our highways each year or the relationship of hours/fatigue to single-vehicle fatalities. There is also an important public safety dimension here. While multiple deaths are common in collisions between articulated vehicles and other trucks or between articulated vehicles and cars, utilities etc driven by other road users this has aroused little public debate or official inquiry (beyond a coronial investigation and, in some instances, subsequent court proceedings against the driver). Thus, four, five or six people may die in a road-related incident involving a heavy vehicle (such as the crash in North Queensland in November 2000) with a limited official response. A similar number dying in an airplane or train crash leads to considerably more media attention and invariably an official investigation.

There are other indications of the hazardous nature of the industry. Claims on compulsory third party insurance (CTP) involving heavy vehicles have escalated in recent years and despite recent increases the insurance industry has made it plain that existing premiums do not cover the cost of claims by a substantial margin. For example, one insurer argued that the

premiums for heavy goods carrying vehicles needed to be 30% above the current level and added:

The magnitude of the problem is best explained by comparing the experience of heavy Goods Carrying vehicles to that of passenger vehicles. For vehicles based in the metropolitan area the claim frequency for trucks >16t GVM is 4 times that of passenger vehicles and the average cost is 1.4 times higher than that of passenger vehicles (John Vallance written submission on behalf of MMI).

The problem extends to comprehensive insurance where commercial vehicle insurance rates have risen dramatically (in many instances by more than 30%) since October 1999 (written submission, NTI Insurance, page 4). New South Wales appeared to be the worst case, with one insurer reporting that NSW accounted for about 30% of its total trucking business but almost 85% of its underwriting losses nationally (written submission truck insurer). Further, the experience and views of insurers appeared to vary little between those who specialised in road transport insurance and those for who the area was more a sideline. In other words, even the companies with the largest market shares and best databases of risk information were experiencing difficulty because, in their view, premiums simply did not match the escalating cost of claim payouts.

There are other ways of evaluating safety in the long haul trucking industry. The incidence of deaths and injuries associated with moving goods by road – an index of its safety performance – is far worse than the main alternative form of land transport, namely rail. This is despite the fact that far more funds have been expended on upgrading roads than in maintaining an ageing rail network.

Beyond statistical measures there are also more subjective assessments by drivers, their families, the Transport Workers' Union, motoring organisations and individuals who come into regular contact with long haul trucks (such as those living near major highways). As evidence presented later will show, these parties all share a deep concern that the safety performance of the long distance trucking industry is seriously deficient. Many expressed the opinion that they believed things were getting worse rather than better. While this view may be expected from those groups and individuals it is also a view that finds support amongst a number of key regulatory agencies. Further, it is view shared by at least some industry associations and a large number of individual operators who made submissions to the Inquiry. Nor are these concerns confined to NSW. For example, in a letter to Queensland Transport in June 1999 the CEO of one medium-sized fleet wrote:

...we are constantly at the coalface with respect to the management and driver behaviour of other transport companies and what we see is not only depressing but most alarming. It is commonly accepted by responsible and knowledgeable industry people from magazine editors such as Andrew Stewart through to operational management and particular drivers that unsafe linehaul practices are not only rife but becoming worse. [Named own company] drivers work with the knowledge that their lives are at constant risk from getting taken out by another semi. They know what is going on as we do, but like most if not all in road transport want to "PROTECT THE INDUSTRY'S GOOD NAME" by keeping it "in house" (taken from copy of correspondence attached to written submission, Queensland-based transport operator).

For many years the industry has complained of a few bad operators or "cowboys" destroying its reputation and this Inquiry heard many references to this. However, such suggestions simply do not match the overwhelming body of evidence presented to the Inquiry and were often contradicted by other observations in the very oral and written submissions which referred to a fringe of "cowboy" operators. Rather, without demeaning the achievements of a number of very responsible operators, the picture that emerged was one of systemic problems,

with intense competition and pressures from clients causing many operators had to find ways to cut costs and corners in terms of scheduling. The Inquiry was given numerous examples by a wide array of parties of supply chains where, as best, scheduling made no allowance for any contingency and at worst presumed illegal practices. For example, returning to case of fresh produce, the Bowen mango that arrives and is the shops in Canberra on Monday morning in time for those on their way to work would have been unloaded at around 3am in the Sydney markets the same day. The mango had been picked and packed on Friday afternoon/Saturday morning and left Bowen around lunchtime Saturday, with the truck then covering around 3,000 kilometers to the Sydney markets in around 39 hours (assuming departure at precisely 12 noon). Even at an average speed of 90 kph - a heroic assumption given road conditions and speed limits - the driving time would be around 33 hours or in excess of the legal driving limits. More accurately, as one former operator who completed this task (oral submission) observed 'that truck had to do trip to Sydney, around 3,000 in quick time, a lot of law breaking, a lot of speed but nonetheless the mango's fresh when you go to work.' This trip could be achieved legally (using driver changes) but this was not the practice. Yet as far as this Inquiry is aware such supply chains are seldom if ever subject to systematic investigation by regulatory agencies.

The adverse implications of these and other practices for safety are clear and well known within the industry itself.

A Note on Industry Structure and Characteristics

Before turning to a more detailed consideration of safety performance in the long haul trucking industry and assessing the reasons for this, it is important to identify a number of significant characteristics of the industry and its operations which set an important context for what is to follow.

Road represents by far the dominant mode of land transport in Australia and, as in Europe and North America, has been progressively increasing its share of the total freight task. The total road freight task has been growing steadily and is projected to increase by 67% over the next decade in Australia (*Draft Trucking Industry Code of Conduct - Commercial Practices*, 2000:2).

As more than a few submissions to this Inquiry observed, the long distance freight sector of the road transport industry is very competitive. Indeed, as the RTA submission observed it is close to a textbook definition of a competitive market. The industry is characterised by a large number of operators, relatively low barriers to entry and fierce competition for both loads which all impact on freight rates. The Report of the Inquiry into National Road Freight Industry (May et al, 1984:39) noted that easy entry into the industry could be attributed to an absence of scale economies, minimal product differentiation, low equity costs of acquiring a vehicle and minimal licensing requirements.

Intense competition puts significant pressure on transport companies to maximise the return on physical and human capital and achieve cost savings wherever possible. At the same time, as observed by the RTA and numerous other parties, it also results in pressure on some drivers to work too long (rest too little) and too hard. Road freight operators not only compete with each other and other transport modes (most notably rail) for business but to some extent must also compete with trucking fleets maintained by potential and actual clients. In July 2000 there were 218,816 fleets operating freight carrying trucks over 4.5 tonnes GVM in Australia, with only 31,810 of these being hire/reward operators, of which about one third are involved in long haul tasks (TL Consultants, TransEco, BTE, NRTC, 2000). In other words, specialist or for profit road-freight operators represent less than 20% of trucking fleets, with the major industries operating not-for-hire trucking fleets being agriculture/forestry (121,923

fleets), building and construction (17,959 fleets), manufacturing (11,568) and wholesale/retailing (27,856).

In many cases the not-for-hire fleets are small. In agriculture/forestry and building construction single vehicle fleets constitute around 75% of the total fleet and once small fleets of 2-4 trucks are added the figure jumps to well over 90%. In manufacturing and wholesale/retail over half the fleets are single vehicle and the addition of 2-4 truck fleets again lifts the figure to over 90%. However, small fleets are also the dominant business type amongst for-hire freight operators, there being 21,762 single truck operators (all owner/drivers) or just over two thirds the total, and another 7,803 2-4 truck fleets (including some owner/drivers) which together accounts for over 90% of all operators. In other words, self-employed drivers and very small fleets (where the owner often also drives) account for the vast majority of the trucking of the trucking workforce and this is also characteristic of (if not more pronounced with regard to) the long haul/ling distance component of the industry. Self-employed drivers constitute a significant and growing component of the trucking workforce in countries/regions such as Canada (Bess, 1999:17) and the European Union, and the Inquiry received submissions that a similar trend was occurring in Australia at least partly as a consequence of more elaborate subcontracting of freight tasks (see Section3 of this Report).

At the other extreme, the Australian for-hire road freight industry includes 211 operators with 20-49 trucks, 42 with between 50 and 99 trucks and 30 fleets with 100 or more trucks. It was suggested that the six largest transport companies accounted for around 20% of the total for-hire freight task. There are some large fleets in the not-for-hire category. In some industries the vertically integrated operations of large employers have led to medium to large not-for-hire fleets. In agriculture/forestry 72 fleets consisted of between 20 and 49 trucks and one fleet had between 50 and 99 trucks while in building and construction there were 51 fleets of 20 to 49 trucks and 31 fleets of 50 to 99 trucks. However, it is manufacturing and wholesale/retail where larger fleets are common. In the former there were 154 fleets with 20 to 49 trucks, 82 with 50 to 99 trucks and 20 fleets had 100 or more trucks. In wholesale/retail 31 fleets had between 20 and 49 trucks, 72 had 50 to 99 trucks and 21 fleets had 100 or more trucks.

As might be expected, hire and reward fleets travel disproportionately further than ancillary fleets (accounting for well over half the total distance travelled by trucks) although around 75% of these fleets operate over short journeys (and the same ratio applies to NSW). Only a small percentage of fleets operate long distance, a tiny fraction of all truck fleets, despite the prominent public image of this component as the 'trucking industry'. As might be expected, membership of industry associations is skewed to medium to large for-hire fleets and includes comparatively few small fleet and owner/operator members.

Not all heavy vehicles are involved in long distance trucking although articulated trucks (a subcategory of heavy vehicles) are predominantly used in the long haul segment (as indicated by the RTA in its submission and not seriously questioned by any party). Given an inability to differentiate between short haul and long haul vehicles in most sets of statistics, data for heavy vehicles or articulated trucks is commonly used by bodies such like the RTA as a surrogate for data on long distance trucking. With regard to safety in particular this appears a reasonable convention, given the high incidence of casualty-crashes on roads and highways outside the major urban areas and the serious understatement of injuries to truck drivers in official statistics more generally that are identified in a later section. It is a convention that will be followed in this Report both for the reasons just mentioned and because the picture painted by this data is overwhelmingly consistent with other evidence collected in the course of the Inquiry.

Without gainsaying the importance of long distance freight movements in the Northern Territory, South Australia, Tasmania and Western Australia, it can be observed that well over 90% of long distance road freight occurs in the three east coast mainland states of New South Wales, Queensland and Victoria. In other words, the east-coast corridor represents by far the most significant area of long haul road transport in terms of the number of trucks as well as the value and gross tonnage of freight moved.

As the most populous state located between Queensland and Victoria (and therefore strategically positioned in terms of major east coast routes), the vast majority of interstate road freight (around 80% according to an ABS estimate cited in the RTA submission) moves through NSW. As a result NSW has the highest exposure to long distance road transport operations (and truck crashes according to the RTA) though the integral role of Queensland and Victoria in these movements needs to be recognised.

Structure of the Report

The remainder of the report is divided into six sections. Section 2 provides a detailed assessment of safety performance in the long haul road transport industry, using a range of indicators. Section 2 establishes the context for the next four sections specifically address key terms of reference for the Inquiry. Section 3 examines the role of commercial practices as a source of hazardous practices in the industry. Section 4 examines the adequacy of existing enforcement practices. Section 5 assesses different models of regulation. Section 6 examines co-ordination and the resourcing of regulatory agency activities in relation to trucking safety. Section 7 makes specific recommendations arising from the findings of earlier sections. The appendices contain the terms of reference/advertisement details, a legal opinion on key issues arising from the Inquiry, a full report of a survey of 300 drivers undertaken as part of the Inquiry.

2. OVERVIEW OF SAFETY ISSUES AND PERFORMANCE IN LONG DISTANCE TRUCKING

In the course of the Inquiry evidence was collected in relation to a wide range of health and safety issues in the long distance trucking industry. Although the principle focus of the inquiry was on the safety of drivers and other road users health issues cannot be ignored because they interact with safety in many ways. For example, excessive fatigue amongst drivers not only increases the likelihood of a collision or other serious incident, it also has long term health effects on drivers that will lead to a series of hidden costs such as additional medical/health treatment and the possibility of premature retirement. A similar scenario applies to the use of stimulant drugs. Effects also operate in the opposite direction. That is, a driver whose health is impaired by exposure to excessive vibration and noise, over-exertion, psychological stress or long-term drug use may well find it more difficult to operate their vehicle safely.

This section of the report is divided into two parts. The first part examines the extent (in statistical, human and economic terms) of safety and health problems in the long distance trucking industry, including recent trends. The second part then looks at specific OHS problems and risk factors in detail, placing this in the context of findings from earlier inquiries/reports and other sources of evidence. The aim is to identify those OHS problems demanding most urgent attention (although the interaction of a number is not ignored) as well as to make some preliminary observations about causation. This will establish the context for later sections of the Report on the influence of commercial practices and the nature and effectiveness of existing regulations, compliance programs and agency-coordination arrangements.

2.1 THE EXTENT OF SAFETY AND HEALTH PROBLEMS IN LONG DISTANCE ROAD TRANSPORT

2.1.1 The pattern of crashes causing injury and death

2.1.1.1 *What the evidence shows*

Long distance truck drivers face a significant risk of being injured or killed in a single vehicle or multiple vehicle crash. Indeed, measured in these terms, driving a truck is by far one of most dangerous occupations. Further, collisions between articulated trucks and other vehicles (predominantly cars) as well as incidents involving passengers in heavy vehicles, pedestrians and bystanders means that truck drivers are not the only casualties. Indeed, most persons killed in fatal incidents involving heavy vehicles are not truck drivers but members of the public, adding a serious public safety dimension to considerations about the safety performance of the long distance road transport industry aside from the occupational health and safety dimension of driver safety.

Table 1 provides a summary of the annual number of fatal crashes and fatalities for the years 1981 to 1998. Measured in terms of raw numbers (as opposed to incidence based on number of vehicles or kilometres travelled), in the period 1981 to 1989 there was a downward trend in the total number of crashes and fatalities involving all vehicles. However, as far as can be determined, this trend was not matched by fatal crashes involving heavy vehicles where, at the very least, there was a serious deterioration in the second half of the 1980s. This culminated in the horror years of 1988 and 1989 when crashes involving articulated trucks accounted for just over 10% of all fatal crashes and a slightly higher proportion of total vehicle crash fatalities (11.1 and 12% respectively). After 1989 a significant improvement is clearly discernible with a decline in both the number of fatal crashes and fatalities involving

articulated trucks. It should be noted that this shift corresponds with significant regulatory intervention in response to horror smashes such as that at Cowper where 20 people died and a widespread view that the industry was running 'out of control' (these incidents and issues are examined later in the Report).

Table 1: Fatal Crashes and Fatalities, all crashes and articulated vehicles, Australia 1981 to 1998

Year	Crashes			Fatalities		
	All Crashes	Articulated Vehicles	Per cent	All fatalities	Articulated vehicles	Per cent
1981	2914	236	8.1	3321	n/a	–
1982	2872	251	8.7	3252	n/a	–
1983	2485	216	8.7	2755	n/a	–
1984	2508	232	9.25	2822	n/a	–
1985	2627	218	8.3	2941	n/a	–
1986	2577	194	7.5	2888	232	8.0
1987	2487	199	8.0	2772	243	8.8
1988	2572	260	10.1	2887	320	11.1
1989	2406	250	10.4	2801	335	12.0
1990	2050	205	10	2331	263	11.3
1991	1874	156	8.3	2113	183	8.7
1992	1736	154	8.9	1974	181	9.2
1993	1737	171	9.8	1953	204	10.4
1994	1702	151	8.9	1928	179	9.3
1995	1822	165	9.1	2017	199	9.9
1996	1768	161	6.2	1971	194	9.8
1997	1603	146	9.1	1768	171	9.7
1998	1580	151	9.5	1763	179	10.2
			8.8			9.9

Source: Road Fatalities Australia: 1998 Statistical Summary, FORS 1999 reproduced in Smith (2000).

Overall, in 1998 the number of fatal crashes was less than two-thirds the figure for 1989 and the number of fatalities involving articulated trucks had almost halved. As far as the Inquiry could determine the precise reasons for this decline (including the role of better roads/dual carriageways; improved vehicles; more effective regulation; better management) has never been subjected to detailed investigation. The Inquiry was surprised by this gap in our knowledge, as it presumed the National Road Transport Commission (NRTC) or Federal Office of Road Safety (FORS) would have commissioned research into such an important question. In the absence of such research, all that can said is that the trend occurred in a context where both number and average size of articulated vehicles was increasing although it should be noted the same applies to other vehicles where there is a decline throughout the 1980s and 1990s. At the same time, it needs to be noted that both in the 1980s (Young, 1990) and now heavy trucks remain over-represented in fatal crashes (where the rate of involvement

in fatal crashes is compared to the proportion of vehicles constituted by heavy trucks). Further, articulated truck smashes still account for a significant component of the national road toll which has not declined over the last decade or more - indicating that action to improve safety performance in this area could yield substantial benefits.

Importantly, closer examination of national and NSW figures paint a less optimistic picture in terms of raw numbers (ie unadjusted for number of vehicles or kilometers travelled) (see Tables 2 and 3). Table 2 shows that a marked decrease in the total number of fatal articulated truck crash fatalities occurred between 1990 and 1991 and after this time the trend is flat at best. This is also true for the total number of fatalities as a result of crashes involving articulated trucks (see Tables 1 and 3) and if 1995 is treated as a benchmark it could even be suggested that there has been a deterioration in NSW over the past five years. Figures for 2000 and subsequent years could, of course, remove this apparent upward trend or confirm it. The Report cannot speculate on this. What can be said is that the trend since 1991, though arguably an improvement when increased vehicle numbers are taken into account (but see below), does not indicate an improvement in terms of total number of fatalities and fatal crashes involving articulated trucks. Examining all vehicle crashes and all vehicle fatalities for the same period (ie since 1991) show an improvement (see Table 1). **In other words, at least in terms of raw numbers the trend with regard to articulated trucks do not match those of motor vehicle incidents more generally. These points need to made clear as a number of submissions to the Inquiry cited these figures an indicating a steady improvement in the safety performance of the trucking industry.**

Table 2: Crashes involving articulated trucks in NSW, 1990 to 1999

Year	All artic crashes[1]		Fatal artic crashes[2]	
	NSW	Aust[3]	NSW	Aust[3]
1990	1,112	N/A	77	205
1991	948	N/A	64	156
1992	936	N/A	73	154
1993	1,019	N/A	60	171
1994	1,139	N/A	52	151
1995	1,163	N/A	49	165
1996	1,215	N/A	48	161
1997	1,285	N/A	60	146
1998	1,518	N/A	58	151
1999	1,520	N/A	55	162

1. All recorded crashes; that is, those involving injury or tow-away.
2. At least one person involved in the crash was killed.
3. Source for Australian data: Australian Transport Safety Bureau, Transport Safety Statistics Unit. Table supplied by the RTA.

Adjusting for the number of vehicles does not improve the picture. Two sets of data are available on the number of registered trucks. First, census based data produced by the Australian Bureau of Statistics (from ABS Catalogue 9309.0 supplied to the Inquiry courtesy of the RTA). This shows the number of heavy rigid trucks in Australia fell from 629,705 in

1988 to 291,251 in 1999 with much of the fall occurring between 1988 and 1991. During the same period the number of articulated trucks increased from 48,857 in 1988 to 63,295 in 1999 or about 29.5% (this increase is fairly steady ie not concentrated between 1988 and 1991). In the same period the number of heavy rigid trucks in NSW fell from 186,056 to 82,031 while the number of articulated trucks grew from 14,881 to 16,278 or about 9.4%. For the same years the number of other vehicles grew from 8,928,365 to 12,027,694 Australia-wide (or 34.7%) and from 2,822,371 to 3,599,702 in NSW (or 27.5%). A second set of data comes from the RTA's own registration records which are, of course, are confined to NSW. These records indicate that the number heavy rigid trucks fell from 85,423 in 1988 to 73,307 in 1999 (rising again to 74,537 in 2000) while the number of registered articulated trucks actually fell from 15,668 to 14,145 in the same period (rising again slightly to 14,226 in 2000). For the same years the number of other registered vehicles in NSW increased from 2,991,999 to 3,478,719 or 16.3% (with a further increase to 3,575,393 in 2000). As can be seen, there are major inconsistencies between the ABS and RTA data in relation to the heavy rigid vehicles (as a result of different criteria for a 'heavy vehicle' and perhaps the changeover from Tare to GVM). On the other hand, there is a fairly close alignment in relation to the figures for articulated trucks (even if the trend is reversed).

Yet the choice of data set does not materially affect the observation that can be made when comparing road fatality statistics to trends in the number of articulated trucks and other vehicles. As noted, the absolute number of fatalities involving articulated trucks has remained steady or stagnant since 1991 while the overall number of road fatalities has fallen, the clear result of fewer fatal incidents involving other vehicles. Yet this trend in no way mirrors trends in the number of vehicles of different types travelling on highways and other roads. For the state of NSW both the ABS and RTA data record a substantial increase in the number of 'other vehicles' that is in no way matched by the number of articulated trucks. According to the ABS data the number of articulated trucks increased by only just over a third of the percentage increase recorded for other vehicles. Using RTA data gives a 16.3% increase in 'other vehicles' and a 9.7% decrease in the number of articulated trucks. Even using the ABS data for Australia as a whole, the 34.7% increase in 'other vehicles' is clearly greater than the 29.5% increase in articulated trucks. **In sum, reference to overall trends in vehicle numbers merely reinforces the greater improvement in relation to road safety of 'other vehicles' in comparison to articulated trucks.**

Further, Table 2 shows that in NSW there has been a general increase in the number of crashes (of all severities) involving articulated trucks over the years 1990 to 1999. Indeed, comparing the figures of 948 crashes in 1990 and 1,520 crashes in 1999 - an increase of over one third - is not unrepresentative of the overall trend. Unfortunately, no comparable data are available from the Australian Transport Safety Board (ATSB). However, if a similar trend has occurred Australia-wide we are left with the question of explaining a significant increase in the number of articulate truck crashes but a steady number of fatalities relating to such crashes. Even if this trend was confined to NSW, it is certainly an issue of interest to NSW residents and given the significant contribution of NSW to overall truck-related fatalities and its centrality to interstate road transport, it has broader ramifications. Once again, the Report needs to observe that it is unaware of any detailed analysis of the reasons underpinning these trends. It could be speculated that the discrepancy can be accounted for in terms of vehicles becoming more crash-safe, roads and their immediate environments becoming more crash-safe, a shift in the types of crashes toward those with lower severity, or more effective medical treatment. All these factors may have played a role in suppressing the number of fatal crashes despite the increase in total crashes. But the short answer is we don’t know. It is also worth noting that the above data and commentary do not distinguish between crashes and fatalities by the contributing factors. The trends may be different, for example, if speed-related or fatigue-related crashes and fatalities are analysed separately.

Table 3: Fatalities involving articulated trucks in NSW, 1990 to 1999

Year	Artic drivers killed		Other road users killed[1]		Total killed	
	NSW	Aust[2]	NSW	Aust[2]	NSW	Aust[2]
1990	18	46	76	216	94	263
1991	13	30	65	153	78	183
1992	18	40	66	141	84	181
1993	21	42	48	143	69	204
1994	9	27	58	140	67	179
1995	10	31	53	168	63	199
1996	13	33	43	160	56	194
1997	15	36	56	135	71	171
1998	23	N/A	48	N/A	71	179
1999	13	N/A	51	N/A	64	189

1. In crashes involving at least one articulated truck
2. Source for Australian data: Australian Transport Safety Bureau, Transport Safety Statistics Unit. Supplied by RTA.

Turning to the breakdown of driver and other road user fatalities (Table 3) a similar pattern emerges. After 1991 there is no clear trend of improvement in relation to either the number of truck drivers or other road users killed in crashes involving articulated trucks for both NSW and Australia. Overall, truck drivers constitute about one third of all those dying in such crashes. Again, breaking down crashes by cause (fatigue, speed etc) and fault might result in somewhat different ratios.

A written submission from Inspector Dave Evans of the Traffic Services Branch of the NSW Police Service raised concerns in relation to recent trends in crashes involving heavy vehicles:

In 1999 within NSW some 96 heavy vehicles were involved in fatal crashes. This was an increase on 1998 when 91 heavy vehicles were involved in fatal crashes. There was very little change in the frequency of heavy vehicles involved in injury crashes as compared with 1998. In 1999 there were some 1,293 crashes as opposed to 1,297 for 1998. Non-injury crashes in 1999 involving heavy vehicles stand at 2,101. In 1998 there were some 2,050 non-injury crashes involving these vehicles. Year to date figures for this year show another increase in fatal crashes involving heavy vehicles.

As with the figures already discussed it is too soon to suggest that recent increases are precursors to an upward trend. However, both the RTA and the Police have expressed concern and careful examination of the figures indicates that serious consideration of underlying trends and the reasons for them is warranted.

Given that the total road freight task has increased substantially since 1988, the only basis where the improvement of safety performance with regard to articulated trucks may be more significant would be in terms of kilometres travelled (after discounting the effect on freight tonnage movements of larger trucks). Tables 4 and 5 provide data on

Table 4: Road Crash Fatality Per 100 Million Kilometres Travelled: Articulated Trucks vs All Other Vehicles

	NSW						Australia					
	Articulated Trucks			All Other Vehicles			Articulated Trucks			All Other Vehicles		
	Total Kilometres Travelled (million)	Fatalities	Fatality Per 100 Million Travelled	Total Kilometres Travelled (million)	Fatalities	Fatality Per 100 Million Travelled	Total Kilometres Travelled (million)	Fatalities	Fatality Per 100 Million Travelled	Total Kilometres Travelled (million)	Fatalities	Fatality Per 100 Million Travelled
1988	1,400	151	10.8	51,452	886	1.7	3,836	320	8.3	153,907	2,567	1.7
1991	1,436	78	5.4	47,442	585	1.2	3,959	183	4.6	150,385	1,930	1.3
1995	1,725	63	3.7	50,690	557	1.1	5,094	199	3.9	166,509	1,818	1.1
1998	1,735	71	4.1	57,225	485	0.8	4,921	179	3.6	173,312	1,584	0.9
1999	1,845	64	3.5	57,753	513	0.9	5,262	189	3.6	177,630	1,570	0.9

Sources 1) Estimated total kilometres travelled data from Australian Bureau of Statistics. The data are likely to have been overstated for All Other Vehicles for both NSW and Australia for years before 1995. Also, due to change of methodology, direct comparison of data before and after 1998 is not reliable. 2) NSW fatality data from Road Traffic Accidents in NSW South Wales, 1988, 1991, 1995; Road Traffic Accident Database, 1998 and 1999 (Table 10). 3) Australia fatality data from Australian Transport Safety Bureau monthly fatality database. The Inquiry is grateful to the ATSB for supplying this data.

Table 5: Fatal Road Crashes Per 100 Million Kilometres Travelled: Articulated Trucks vs All Other Vehicles

	NSW						Australia					
	Articulated Trucks			All Other Vehicles			Articulated Trucks			All Other Vehicles		
	Total Kilometres Travelled (million)	Fatal Crashes	Fatal Crashes Per 100 Million Travelled	Total Kilometres Travelled (million)	Fatal Crashes	Fatal Crashes Per 100 Million Travelled	Total Kilometres Travelled (million)	Fatal Crashes	Fatal Crashes Per 100 Million Travelled	Total Kilometres Travelled (million)	Fatal Crashes	Fatal Crashes Per 100 Million Travelled
1988	1,400	120	8.6	51,452	792	1.5	3,836	260	6.8	153,907	2,312	1.5
1991	1,436	64	4.5	47,442	521	1.1	3,959	156	3.9	150,385	1,718	1.1
1995	1,725	49	2.8	50,690	514	1.0	5,094	165	3.2	166,509	1,657	1.0
1998	1,735	58	3.3	57,225	433	0.8	4,921	151	3.1	173,312	1,429	0.8
1999	1,845	55	3.0	57,753	451	0.8	5,262	162	3.1	177,630	1,385	0.8

Sources 1) Estimated total kilometres travelled from Australian Bureau of Statistics. The data are likely to have been overstated for All Other Vehicles for both NSW and Australia for years before 1995. Also, due to change of methodology, direct comparison of data before and after 1998 is not reliable. 2) NSW crash data from Road Traffic Accidents in NSW South Wales, 1988, 1991, 1995; Road Traffic Accident Database, 1998 and 1999. 3) Australia crash data from Australian Transport Safety Bureau monthly fatality database. The Inquiry is grateful to the ATSB for supplying this data..

Notes 1) Figures of 1988 Total Kilometres Travelled are rounded up to the nearest million.
2) It is a coincidence that the fatalities per 100m travelled for All Other Vehicles for NSW and Australia are the same.

Calculations: All Other Vehicles = Total - Articulated Trucks. It includes pedal cycle and pedestrian accidents. Fatal crashes per 100 Million Travelled = Fatal Crashes / Total kilometres Travelled (million) x 100

road crash fatalities and fatal crashes for articulated trucks and other vehicles for NSW and the whole of Australia in years where national data is available (data on rigid trucks is not included as coding problems makes this too unreliable). As can be seen from the first of these Tables (Table 4), there is a significant improvement in the number of articulated truck crash-related fatalities per 100 million kilometres travelled between 1988 and 1999 for both NSW and Australia (but especially the former). This improvement is significantly greater than the improvement in the per kilometre fatality rate for all other vehicles over the same period (though coming off a far higher base). At the same time, the improvement has been marginal for both categories since 1995 and a substantial gap remains. That is, the rate of crash-related fatalities for articulated trucks per 100 million kilometres travelled is well over three times the equivalent figure for all other vehicles.

The next Table (Table 5) on fatal crashes per 100 kilometres travelled between 1988 and 1999 reveals a very similar pattern with a substantial improvement with regard to crashes involving articulated trucks outstripping the improvement recorded for all other vehicles, albeit coming from a much higher base. Again, there is little improvement (and arguably a deterioration in NSW) after 1995 and, if anything, the improvement in relation to all other vehicles is greater than that for articulated trucks Australia-wide after 1995. It should be noted that, for both tables, the 'all other vehicle' category includes heavy rigid trucks, so we are not just talking about a truck versus car/light truck scenario (and evidence on the higher crash-related insurance claim rate for trucks has already been cited). Moreover, there is still a substantial gap between the fatal crash rate of articulated trucks and other vehicles, with the former accounting for more than three times the number of fatalities per 100 million kilometres travelled.

In sum, Tables 4 and 5 indicate that there was a substantial improvement in both the rate of crash-related fatalities and fatal crashes per 100 million kilometres travelled for articulated trucks between 1988 and 1999 and the improvement was greater than that for all other vehicles. However, after 1995 the improvement in crash-related fatalities (for both vehicle categories) Australia-wide is marginal and the improvement in the rate of fatal crashes is arguably greater for other vehicles than articulated trucks. If anything, the NSW specific data after 1995 paints a slightly worse picture for articulated trucks. Most importantly perhaps, while both the gap between articulated trucks and other vehicles in terms of the crash fatality and fatal crash rate per 100 million kilometres travelled has narrowed, it still remains substantial, and since 1995 this trend has slowed if not stalled.

Again, the Inquiry is forced to conclude that while the safety performance of articulated trucks shows a substantial overall improvement since the late 1980s the record is by no means as outstanding as some submissions purported and indeed since the mid 1990s little improvement can be detected. Further, even in terms of per kilometres travelled articulated trucks still account for more than three times to number of fatalities and fatal crashes as all other vehicles.

Another basis for assessing safety performance in the trucking industry would be to compare Australian fatality statistics with those of other countries. As Cairney (1991:10) notes such comparisons are fraught with difficulty given differences in definitions and reporting methods. Nonetheless, with these caveats in mind comparisons undertaken in the 1980s indicated that the rate of fatal accidents per 100 million kilometres travelled by trucks in Australia was 1.75 times the Finnish rate and 1.85 times higher than the US rates (Cairney, 1991:10). That is, fatality rates in Australia were almost double that of other countries considered. Thanks to the cooperation of the Federal Office of Road Safety and the efforts of Peter Cairney it has been possible to update these comparisons. Using data for the year 1998, the fatal crash rate involving articulated trucks in Australia was 3.07 per 100 million vehicle/kilometres travelled while the road fatality rate involving articulated trucks was 3.63

per 100 million vehicle/kilometres. US National Highway Traffic Safety Administration data for the year 1996 (the most recent available) indicates there were 1.63 fatal crashes involving large trucks (ie over 4.5 tonnes GVM) per 100 million kilometres travelled and 1.75 fatalities in crashes involving heavy trucks per 100 million kilometres travelled. For the UK the most comparable data for the year 1998 indicates that there were 1.2 fatal crashes involving heavy gross vehicles (ie over 3.5 tonnes GVM) per 100 million kilometres travelled and 1.79 fatalities in crashes involving heavy gross vehicles per 100 million kilometres travelled (source, Tables 1b,7,9&25 RAGB, 1998). Again, it needs to be stressed that, as with the 1980s comparisons, definitional and methodological problems mean that comparisons need to be treated with some caution (comparisons of injury/crash rates are if anything more problematic). Nonetheless, it would appear that there has been no discernible improvement in fatality/fatal crash rates relative to countries with which such comparisons of safety performance are normally made.

Roughly speaking, the fatality/fatal crash rate involving heavy vehicles remains almost twice that of the USA (where trucks cover similar vast distances but with climate and road quality differences) and the UK. In sum, while international comparisons of fatality/fatal crash rates need to be treated with considerable caution the available data provides cause for concern. The results, if made public, are unlikely to generate a sanguine response from the Australian community.

Another basis for assessing safety in the road transport industry is to compare fatality (or injury rates) with other industries or, of more direct concern to this Inquiry, to compare fatality or injury rates of truck drivers to other occupations. In other words, just how dangerous is trucking as a job? The short answer to this question is that driving a truck, and especially an articulated truck over long distances, is one of the most dangerous occupations. This applies equally to Australia and the USA (despite the comparatively lower fatal crash rate of the latter). In the USA almost 70% of truck drivers who die as result of work are killed in highway crashes (Toscano, 1997). Annual censuses of fatal occupational traumas in the USA consistently show truck drivers constitute the largest number of deaths (well over 10% of the total) and rank in the 6-8 most dangerous occupations when employment share is taken into account (Windau and Jack, 1996; Knestaut, 1997; Toscana and Windau, 1998). Around half of those drivers killed are in control of semi-trailers (and thereby overwhelmingly involved in long haul freight tasks. Toscano and Windau, 1990:37, NIOSH, 2000). The National Institute of Occupational Safety and Health (NIOSH, 2000:41) – the federal government agency responsible for OHS research - has recently identified an upward trend in both the absolute number of truck driver fatalities and the fatality rate per 100,000 workers.

Truck driving also accounted for the highest number of non-fatal injuries in 1995 - a by no means atypical year. Most of these injuries were not related to crashes but other aspects of drivers' work:

Truck drivers spend many hours behind a steering wheel. Tight delivery schedules may mean drivers have little time to waste at delivery sites, so they move heavy items immediately upon arrival to save time. Strenuous activity after hours of sitting, without time to stretch stiff muscles, may help explain why drivers sustain these injuries (Knestaut, 1997 p3)

Unlike the USA, there is no annual census of fatal occupational traumas in Australia, although the National Occupational Health and Safety Commission has produced two fatality censuses for the years 1982-1984 and 1989-1992. The most recent of these censuses indicated that transport and storage accounted for 22% of all fatal injuries. Transport and Storage had the third highest death rate of any industry (at 23 deaths per 100,000 persons employed) and of the 370 Transport and Storage workers killed between 1989 and 1992, 308 were truck drivers (NOHSC, 1999:3). Truck driver ranked as the sixth most dangerous occupation (at 41 deaths per 100,000 employed and behind fishermen/women, forestry workers, drilling plant

operators, mining labourers, and ship pilots/deckhands) at seven times the all industry average (5.5 per 100,000 employed). More recent data on work-related fatalities in Victoria (for the years 1993/94 to 1996/97) confirms this pattern, with the transport industry accounting for 77 (or 23%) of the total number of 332 recorded deaths (written submission, Victorian WorkCover, Attachment 2).

Yet another but related basis for comparison is to measure the performance of the road transport industry against another transport sub-sector, and the one with which the long haul sector most directly competes, namely rail freight. In 1993 1953 Australians were killed in road smashes and 21,557 received injuries requiring hospital treatment at an estimated cost of $6.1 billion (representing 93% of the cost of all transport accidents, Department of Transport and Regional Services, 1999:3). Of those killed, 204 died in smashes involving articulated trucks and 42 of these were truck drivers (see Table above). By way of comparison in the same year 49 Australians died and 88 received hospital injuries in rail accident at an estimated cost of $69 million (or around 1% of total accident costs). **That is, in 1993 – a year in no way unrepresentative of the pattern of trucking fatalities since 1991 – almost as many drivers of articulated trucks died on Australian roads as the total of number of persons killed throughout the entire rail network (passenger and freight) of the nation.**

Consistent with this attempts to directly compare freight-related deaths leads to an even more significant disparity. **In 1998 the ARRB estimated road freight averaged 3.8 fatalities per billion gross tonne kilometres while the comparable figure for rail was 0.55 fatalities** (*Towards a Methodology for Comparative Resource Consumption: Modal Implications for the Freight Task*, ARRB Transport Research Report ARR318 cited in written submission, FreightCorp, page 4). While road and rail transport are not complete substitutes (and indeed to a degree complementary) competition and therefore the capacity for substitution is significant with regard to long distance freight. Given the disparity in safety performance this means any significant shift between the two modes will almost certainly have equally significant safety implications. Some aspects of this are considered later in the Report because they were related to other safety issues raised in submissions to the Inquiry or key terms of reference relating to commercial practices and regulation (see below).

Before proceeding further it is worth considering the issue of fault. Whenever a serious collision between an articulated truck and another vehicle is reported in the media the impression often created in the minds of the community is that the truck driver is at fault. Further, incidents where the truck driver was at fault and several people die (and there have been several notable cases recently) are more likely to receive media attention reinforcing public perceptions. However, as Table 6 shows, apart from single vehicle incidents (where the driver is liable to be the only victim) truck drivers were found to be at fault in only a minority of truck smashes. Indeed, for selected years between 1990 and 1996 truck driver fault averaged just over a quarter of multi-vehicle crashes, averaged under 20% of vehicles hitting pedestrians and averaged just over a third of all crashes. This finding appears roughly comparable with international data the Inquiry was able to obtain. For example, in the Ontario Ministry of Transport (1996:6) found that the truck driver had 'not been driving properly' in an average of 27.9% fatal large truck crashes for the period 1988 to 1996 (for the years 1990 to 1996 the figure is little changed at 27.7%)

That truck drivers are not fault in the great majority of fatal crashes is noteworthy, and industry representatives as well as drivers themselves, rightly made mention of it to indicate how misleading some media and community images of drivers were. The issue of fault also highlights the reciprocal relationship between truck drivers and other road users that later parts of the Report will specifically address (notably the problem of road rage and the need for car drivers to have a better appreciation of truck signage and turning/braking characteristics).

Table 6: Truck driver responsibility for crashes, heavy rigid and articulated trucks, Australia 1990, 1992, 1994, 1996

Crash type	Year	All truck crashes	Truck driver at fault	Percent
Single vehicle crash	1990	59	51	86.4
	1992	40	38	95.0
	1994	35	34	97.1
	1996	33	31	93.9
Multiple vehicle crash	1990	257	74	28.8
	1992	202	49	24.2
	1994	199	48	24.1
	1996	186	52	28.0
Pedestrian crash	1990	28	5	18.0
	1992	34	9	26.5
	1994	32	5	15.6
	1996	28	4	14.3
All crashes	1990	344	130	37.8
	1992	276	96	34.8
	1994	264	87	33.0
	1996	247	87	35.2
Without single vehicle	1990	285	79	27.7
	1992	236	58	24.6
	1994	231	53	22.9
	1996	214	56	26.2

Source: ATSB reproduced in Smith (2000).

Notes: Fault is coded if the driver was fully or partially responsible for the crash

Heavy rigid is coded >3.5t in 1990 and >4.5t in 1992, 1994, 1996

At the same time, the pattern of fault in smashes involving articulated trucks does not indicate there are no causes for concern and there are other complicating issues that need to be considered. First, as professionals who drive for a living this result should be the case, even accounting for the immensely greater kilometers covered each year in comparison to the average car driver. Indeed, an even better result might have been expected. During the course of its investigation the Inquiry was impressed with the professionalism of many truck drivers and industry and union representatives. However, it also formed the view that this professionalism was often achieved under extreme pressure and in difficult circumstances that needed to be addressed if further improvements were to be achieved (including targeting less professional operators/drivers).

Table 7: Recent Tends in Truck Crashes in New South Wales 1997 – August 2000

	1997	1998	1999	2000* (YTD)
Number of Casualty Heavy Truck Crashes				
TOTAL	**1014**	**1139**	**1159**	**616**
Driver Speeding	136	143	130	58
Driver Fatigued	92	81	87	40
Insecure Load	19	18	18	9
Number of persons killed or injured in heavy truck crashes				
TOTAL	**1359**	**1575**	**1595**	**835**
Driver Speeding	157	175	170	67
Driver Fatigued	116	92	98	45
Insecure Load	22	20	25	10
Number of casualty crashes for articulated vehicles				
TOTAL	**519**	**618**	**610**	**330**
Driver Speeding	103	108	99	42
Driver Fatigued	68	62	62	32
Insecure Load	14	15	10	5
Number of persons killed or injured in articulated truck crashes				
TOTAL	**688**	**882**	**830**	**450**
Driver Speeding	120	127	131	47
Driver Fatigued	77	67	70	34
Insecure Load	16	16	15	5

* Preliminary data only

Driver information relates to truck drivers only and is not related to "fault".
Source: Table supplied by the RTA.

Second, the attribution of fault masks a number of important issues. Attribution of fault (or the laying of charges) against one party and not the other in a particular incident should not be taken to mean the behaviour of the 'no-fault' party was blameless or in no way contributed to an incident. Table 7 provides a breakdown of truck driver behaviour (speeding, fatigue or insecure load) in both heavy and articulated truck crashes in NSW since 1997. These figures do not entail a formal ascription of fault but should still be of concern in terms of both the overall crash numbers where high-risk practices were detected as well as the trend line (which shows no compelling pattern of improvement).

Third, the attribution of fault to parties other than truck drivers (usually car drivers except where trucks collide) does not rule out a relationship between the presence of articulated trucks and deaths and injury to other road users. Increasing volumes of trucks using major highways as well as longer trucks that take more time to overtake may contribute to more high-risk behaviour on the part of car users. Increase in truck size also increases the chances of death and serious injury to motorists where a collision occurs. Further, damage to roads by heavy vehicles may also contribute to crashes by other vehicles. This is by no means an exhaustive list of scenarios. Without wishing to overstate their importance, the Report will consider several of these issues below.

2.1.1.2 *Putting trucking fatalities into context*

Aside from measuring overall trends in the number of fatalities to drivers of heavy vehicles it is also pertinent to compare the risk of fatality to other occupations. This is by no means a simple exercise because of number of definitional issues and flaws in official data. As Perrone (2000) has all to clearly shown, determining when a fatality is work-related is by no means as simple as is often presumed (for example take the case of a driver who has a cardiac arrest while at the wheel or a driver killed while travelling as a passenger). Equally, official occupational death and injury statistics based on workers' compensation claims are likely to omit many self-employed workers (a significant component of the long distance trucking workforce) and in practice compliance with requirements to notify WorkCover of serious incidents is by no means complete. Perrone's (2000:41) own careful sifting of work-related fatalities in Victoria in the years 1987 to 1990 found that transport was by far the most dangerous industry in terms of total fatalities, accounting for 101 or 28.6% of the 353 work-related deaths identified. Services (18.4%), farming (17.3%), construction (15.6%) and manufacturing (9.3%) followed by road transport. The industry accounted for only about 4.7% of the Victorian workforce during the period studied. In other words, the transport industry accounted for less than 5% of the workforce but well over 25% of work-related fatalities.

Hopkins (1992 cited by Perrone, 2000:40) study of occupational fatalities in New South Wales found a similar pattern although transport accounted for an even larger proportion of work-related deaths (41%) and construction-related fatalities were around half the Victorian figure (ie 7%). While the great majority of these deaths involved road transport these figures of course do not isolate those transport deaths occurring amongst long distance truck drivers. It is also worth noting that the Perrone and Hopkins' studies both found that the number of workers killed who were self-employed was 24.4% and 23.3% respectively – a figure that far exceeded their representation in the workforce.

In sum, both Australian and USA data show that road transport accounts for more work-related fatalities than any other industry and a disproportionate share when adjusted for employment levels. Truck drivers killed in collisions (most on highways) constitute the biggest single group of road transport worker deaths (and again disproportionate to their share of overall employment in the industry). Truck driving remains a one of the most dangerous occupations and has certainly not improved its ranking over the past decade.

The high incidence of highway fatalities (both drivers and other road users) involving articulated vehicles has significant - but often unrecognised - psychological effects on drivers and their families. These effects are, if anything, magnified by media reporting of cases where other road users are killed which tend to imply that the truck or its driver are at fault, irrespective of the evidence with headlines such as 'Truck Kills'. After referring to the latter problem, the wife of an owner/driver expressed her view about the emotional pressures that the high-risk nature of the industry places on both drivers and their families:

Whenever the news headlines mention a truck crash it suddenly changes the mood in my home. You rush to the television and sit glued to the screen. Your mind races; where is he today? Could it be him? You nervously stare at the screen, your eyes scanning desperately to see if you recognise the truck that has been involved. Your hands get sweaty and your heart beats so hard that you can hardly breath. You get that feeling in your stomach that you get just before you vomit. No it doesn't look like ours, no it's not anyone that you know…you sigh with relief. Then you feel guilty because you are so relieved that it is someone else and because you know that somewhere there is a family in tears and next time it could be you.

Does anyone ever stop to consider how the truck driver feels after he has been involved in an accident and people have been injured or killed? Regardless to whether he was at fault or not, the truck driver has to live with the memories of the accident for the rest of his life. The sights, the sounds, the smells, the feelings, they are always with him. 11 years ago my brother, brother-in-law and nephew were killed in a head on smash with a truck at Mildura. It was not the truckie's fault. The car in which my family was travelling veered into the path of the oncoming truck [and] they were all killed instantly. To this day my heart goes out to that driver. The pain and suffering he must have gone through, and still be going through, would be equal if not greater than that which we experienced. On this occasion the driver was lucky because he had not been taking drugs, because if he had he would have been charged even though the accident was not his fault (written submission, wife of owner driver, southern New South Wales).

It should be noted that the distress associated with involvement in fatal incidents is well recognised in other areas of transport, such as the provision of counselling and support for train-drivers in charge of trains that hit persons on the line (including suicides). However, the Inquiry was unaware of any similar facilities for truck drivers aside from the voluntary services provided by individual priests and the Concerned Families of Australia Truckies (CFAT), an association of the partners, family and friends of professional truck drivers. CFAT was established in September 1999, receiving support from the Transport Workers Union, Motor Accidents Authority and a number of other bodies. The association has established a network of branches to counsel drivers and their families affected by grief related to accidents as well as support for fatigue/long hour/separation pressures associated with the industry. Like similar organisations in Canada, the USA and elsewhere, CFAT has campaigned to raise public awareness of the pressures on truck drivers and to lobby government, transport companies and major clients like large retailers to bring about changes in the industry.

2.1.1.3 Other evidence on truck crashes

For reasons discussed more fully below, the evidence just presented provides a valuable but incomplete picture of the crash involvement of long distance truck drivers. Most notably, the figures presented do not directly measure the likelihood of a driver experiencing a crash, they do not allow a breakdown by employment status or other categories, and casualty-crash figures do not capture all crashes where an injury was sustained. To provide additional information on these and other issues 300 long distance truck drivers were directly interviewed at truck stops, depots and other work sites. The survey was undertaken by an experienced researcher Dr Claire Mayhew (assisted by P Doughty who provided a detailed list of truck stops and depots) using methods that had been successfully employed for road transport and a range of other workers over a number of years. Care was taken to ensure a relatively comparable sample of both small-fleet and large fleet drivers and owner/drivers. All drivers were interviewed in NSW but the survey sample included drivers from other states. The full survey, including methodology is included as Appendix 3 of this Report, and so major findings will only be reported here in summary form.

In the survey drivers were asked to report on their crash experiences both in the last 12 months and in the previous five years. Table 8 indicates that small fleet drivers (12.5%) admitted to having had more crashes in the previous 12 months than did owner/drivers (10.1%) or large fleet employees (5.9%). These differences were magnified when perceived seriousness of crashes was taken into account. Table 8 shows that large fleet drivers reported more 'little crashes' that did not stop them driving (7.1%) than did those employed in small fleets (4.8%) or owner/drivers (3%). Of course what are termed 'little crashes' by drivers may not be identified as such by insurance companies. For example, there may be large financial claims following crashes involving cars at roundabouts where little damage has occurred to the trucks involved. Variations in the types of crashes could be identified between

city and country areas, rather than between highways. City and country-town incidents typically involved cars at intersections or roundabouts as well as incidents at freight-forwarding yards or delivery sites. While truck drivers and their vehicles were rarely injured during these incidents, damage to cars was frequently extensive. This is not only of concern to insurance companies but also relates to problems with large trucks on narrow or busy roads and car-drivers lack of understanding of truck turning and braking characteristics. Both these issues are taken up later in this Report. In contrast, country incidents often involved animals on roads, other vehicles 'running up the back' of trucks, and occasional fatigue-related runs off the road. These country incidents were often severe and resulted in significant injuries for truck drivers as well as extensive damage to their vehicles and large claims on their insurance policies.

Table 8 (Table 19 in Appendix 3)
Truck crashes experienced by 300 interviewed drivers in immediate past twelve month period

	owner/drivers (n=99)	*small fleet drivers* (n=104)	*large fleet drivers* (n=85)	*other* (n=12)
None	86.9%	82.7%	88.2%	91.7%
Yes	10.1%	12.5%	5.9%	8.3%
just little ones that didn't stop driving	3%	4.8%	7.1%	-
Total with any crashes	13	18	11	1
%	13.1%	17.3%	12.9%	8.3%

Source: ***Motor Accidents Authority Truck Driver Survey*** in Appendix 3 of this Report

Overall, the survey indicated that long distance drivers had a better than one in ten chance of being involved in a crash over the last year, and for small fleet drivers the figure was far higher. Large fleet drivers (12.9%) and owner/drivers (13.1%) cited fewer truck crashes in the immediate past 12-month period than did the small fleet drivers (17.3%) interviewed. Further, of those crashes reported large fleet drivers were more likely to cite 'little crashes' that didn't stop them driving than did those employed in small fleets or owner/drivers (Table 8).

While the survey provides some insights into the *incidence* of crashes it does not provide an indication of *severity* (such as medical treatment required and size of insurance claims to trucks and cars involved in crashes). Some insurance claims data is presented elsewhere in this Report. Data about severely injured drivers who had exited the industry following major crashes would also provide valuable information about severity, especially if broken down by fleet size and employment status. Unfortunately, this data was not available to the Inquiry and for reasons made clear later, gaps in insurance data (both road transport and workers' compensation) means that it is, a best, a partial proxy for measuring severity.

Reasons for the better self-reported crash record of drivers in large fleets may include better driver selection/training and equipment (large companies often employ trainers and replace trucks more regularly) and greater use of shuttle systems so drivers sleep at home more frequently. Other possible reasons include greater implementation of fatigue management schemes/ compliance with driving hour requirements, and comparatively lower levels of chronic severe fatigue. The driver survey indicated large fleet drivers were, on average, much younger than owner/drivers with only 10.6% being over 55 years of age (as opposed to. 21.2% of owner/drivers. See Table 9 in Appendix 3). It might be postulated that there is an age effect because older workers are known to be less able to cope with the demands of shift

and night work. However, age does not explain the poorer crash record of small fleet drivers so other factors must be contributing to crash propensity.

The Driver Survey also examined reported truck crashes in the previous five-year period (see Table 9 which reproduces Table 20 in Appendix 3). Small fleet drivers again figured heavily but, unlike the 12-month period, owner/drivers reported more crashes (20.2%). When 'little ones that didn't stop me working are added to provide a combined figure the total reported crashes of small fleet drivers (26%) is higher than for owner/drivers (23.2%). Large fleet drivers reported fewer crashes (15.3%) but more 'little ones' (8.2%) than the other two groups (there may be a reporting effect here given more stringent rules about reporting all incidents in large companies). The reasons for the higher proportion of owner/drivers reporting crashes in the previous five years compared with the last 12-months are unclear, although an overall higher crash rate for owner/drivers is consistent with insurance industry data cited elsewhere in this Report. One possible explanation of the lower reported crashes in the last 12 months is that the 'healthy worker' effect has intensified in this period - resulting in more owner/drivers exiting the industry after a severe crash. As with crashes in the immediate 12-month period, there were few variations between the different highways. Rather, geographical variations in crash experiences were divided between (a) predominantly traffic-related crashes with cars in cities or regional towns; and (b) more serious crashes (for truck drivers) on highways in rural areas.

Table 9 (Table 20 in Appendix 3)
Truck crashes experienced by 300 interviewed drivers in previous five years

	Owner/ drivers (n=99)	*small fleet drivers* (n=104)	*Large fleet drivers* (n=85)	*other* (n=12)
none	76.8%	74%	76.5%	91.7%
yes	20.2%	18.3%	15.3%	-
just little ones that didn't stop driving	3%	7.7%	8.2%	8.3%
Total with crashes	23	27	7	1
%	23.2%	26%	23.5%	8.3%

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

It is hard to get comparable international data. A survey of just over 1000 French heavy vehicle drivers (Hamelin, 2000:23) asked them whether they had ever been involved a traffic accident causing injury. Just over 14% indicated they had been involved in an injury-causing crash. Given this survey used a question restricted to injury-causing injuries over an unlimited time period it is difficult to make comparisons. However, what is notable is that the figure was significantly higher with regard to for-hire carriers (17% overall and 22.7% for drivers under 40 years of age) than drivers working for companies transporting their own goods (9.2% with no significant variation according to age). The official Australian and NSW statistics on fatal road crashes cited earlier do not distinguish between heavy rigid or articulated trucks operated by for-hire freight carriers and those belonging to not-for-hire carriers. Nor was the issue explored by the driver survey undertaken for this Inquiry. However, the French data indicates that this issue warrants serious investigation to see if the same pattern applies in Australia. Such a difference, if not simply the result of differences in average kilometers travelled, would require serious consideration by policy-makers.

2.1.2 The extent of other injuries and health problems in the road freight industry

Fatal crashes attract the bulk of attention in terms of safety in the trucking industry. However, it needs to emphasised that, like other industries, fatal injuries represent only the most visible

tip of a much larger incidence of work-related injury and health problems. First, there are non-fatal injuries arising from crashes as well as the emotional stress that may accompany this or, as already alluded to, driver involvement in fatal collisions. Second, there are injuries or other health problems which are sustained by drivers in the course of their employment but which do not arise as a result of a crash. Some injuries or health problems may contribute to the risk of a crash in the future, the most obvious example being the prolonged use of drug stimulants.

2.1.2.1 *The extent of acute and chronic injuries amongst long haul truck drivers*

Some indication of the extent of the problems is afforded by workers' compensation claims data for the road transport industry. National data for the year 1996/97 (excluding Victoria and the ACT) identified a total of 4,462 new cases in road transport (NOHSC, 1999:3). This represented an incidence rate of 44.62 per 1,000 wage and salary earners or almost double the all industry incidence rate (22.66) and ahead of mining (42.69) and manufacturing (39.81). For the state of NSW in 1998/1999 there were a total of 1,338 claims for injury and disease in the road freight industry (ANZSIC 6110), with truck drivers accounting for 72% of these claims (see Table 10). The claims entailed a total direct cost of $19.8 million (this excludes substantial indirect costs borne by the community), with 5 fatalities (mean cost of $229,974) and 262 instances of permanent disability (mean cost $38,973) accounting for well over half the total claims cost.

Table 10: Workers' Compensation Claims in New South Wales Road Freight Transport 1998/99: Gross Cost and time lost by severity

Severity	Number	Percentage	Time lost		Gross incurred cost	
			Total	Mean	Total	Mean
Death	5	0.4			1,149,872	229,974
Permanent disability	262	19.6			10,210,808	38,973
Temporary disability – six or more months off work	147	11.0	6,105	42.1	3,625,250	24,662
Temporary disability – less than six months off work	924	69.1	4,945	5.4	4,825,953	5,223
Total	1,338	100.0	11,050	10.3	19,811,884	14,807

Source: Information provided by WorkCover NSW

Of course the figures cover the entire road freight industry and not just long distance road freight. On the other hand, the figure excludes interstate drivers injured on NSW roads. It also needs to be noted that, for a variety of reasons, not all injured employee drivers make claims (the Inquiry heard allegations that some companies discourage claims). Further, many owner-drivers do not have workers' compensation cover or are reluctant to make claims even when they do. Overall, even if the claims made in other jurisdictions were added, workers' compensation claims data would still considerably understate the extent of work-related injury and death to long distance truck drivers. Most of the missing or omitted injuries are likely to be of a minor nature (though their aggregate economic and human cost would still be substantial) if the pattern is consistent with a 1993 Australian Bureau of Statistics survey of injury reporting amongst NSW workers (ABS, 1994). However, a still substantial number will be of a serious nature. One ready illustration of this is that while the above table includes only five fatalities for the year 1998/1999, data provided by the RTA indicate that 23 drivers of articulated trucks died in crashes on NSW roads in 1998 and 13 in 1999. Further, even with a

significant discount added, extrapolations from the number of long distance truck drivers who reported acute or chronic injury in the survey conducted for this Inquiry would lead to a level of workers' compensation claims far in excess of the number actually received by WorkCover.

The last point raises a broader issue, namely the problematic or partial coverage of the long distance trucking industry by the workers' compensation system. This has implications for any attempt to assess the full extent (and economic, human and social cost) of work-related injury and disease amongst long distance truck drivers. Since workers' compensation claims data constitutes the prime source for official occupational injury and disease statistics in Australia, coverage omissions result in a substantial level of understatement. It also represents a serious OHS problem, since it means a substantial number of injured drivers and their dependents are unable to access workers' compensation and must rely on generally inferior forms of private insurance, Medicare/social security or their own financial resources. The problem is not simply a question of the actual scope of coverage but also awareness of coverage and preparedness to use these entitlements. As the following Table shows, the survey of 300 long distance truck drivers undertaken for this Inquiry provides a clear indication of the extent of this problem. Drivers were asked to indicate who would pay their medical etc bills if they were injured at work.

Table 11 (Table 21 in Appendix 3):
Workers' compensation and injury insurance coverage of 300 interviewed drivers

	Owner/drivers (n=99)	*Small fleet drivers* (n=104)	*large fleet drivers* (n=85)	*other* (n=12)
No	6.1%	-	-	8.3%
Workers' compensation	38.4%	78.8%	89.4%	41.7%
Insurance policy	42.4%	4.8%	12.9%	8.3%
Not sure	9.1%	15.4%	8.2%	33.3%
Other	6.1%	2.9%	4.7%	8.3%

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report
Note: Some drivers ticked more than one box so percentage totals, especially with regard to large fleet drivers, exceed 100%.

Table 11 shows that there is a significant difference in injury and illness insurance coverage between the different employment status groups. As might be expected, large fleet drivers (89.4%) and those in small fleets (78.8%) are more certain of workers' compensation insurance coverage in the event of a work-related injury, crash-related injury, or illness. That is, fleet drivers are predominantly employees with standard workers' compensation insurance cover. Both the quantitative and qualitative data showed that owner/drivers are least likely to have workers' compensation coverage (38.4%), are more reliant on insurance, but their qualitative data suggested cost was a barrier to owner/drivers taking out cover. (Thus the terms and conditions of insurance policies are of crucial importance to owner/drivers – and to the social security/Medicare systems on which they may 'fall back' if insurance cover is insufficient or absent.) Those in 'other' employment situation have a similar pattern of coverage to owner/drivers – except very few have insurance cover. Drivers in 'other' employment situations (33.3%) and in small fleets (15.4%) are most likely to be unsure of their workers' compensation and insurance coverage; perhaps because many are in an ambiguous employment situation, or on short-term contracts, and may not be fully aware of all details of their agreements.

Further, in their comments some drivers in all employment status groups indicated that they were afraid to make claims on their policies in case this affected continued employment, no-claim bonuses, or future contracts (see Appendix 3). Problems with coverage, awareness and

preparedness to make workers' compensation claims identified in this survey are consistent with earlier surveys of road transport workers, an ABS survey of injured workers in NSW, and studies of self-employed/precariously employed workers more generally (James et al, 1992; Quinlan and Mayhew, 1999). In other words, it is fair to say that the vast majority of owner/drivers do not have workers' compensation cover and a significant number (over 15% according the survey) have no private insurance or are uncertain with regard to their cover. A substantial number of employee drivers, especially those in small fleets, are uncertain about their compensation entitlements. Finally, employment/work insecurity made a number of drivers reluctant to make claims.

The survey findings were supported by submissions to the Inquiry by individual drivers and some organisations. As part of its written submission the Concerned Families of Australian Truckies included a number of driver experience profiles. One concerned a employee semi-tipper driver carting grain for a small transport company, which actively discouraged workers' compensation claims, urging its drivers to use Medicare as otherwise workers' compensation premiums would go up. The driver in question did this when he injured his knee but when another driver made a workers' compensation claim after being admitted to hospital following an accident in Melbourne the company manager 'really harked up'. An insurance/accident investigator (oral submission, Victorian-based investigator) also confirmed his experience of situations where the company employing a driver who was injured in a crash was subsequently found to have no workers' compensation cover. Oral submissions from Victorian-based drivers made similar points about company pressure to use Medicare or their inability as owner/drivers to take out adequate workers' compensation or personal injury cover.

By themselves, these allegations would need to be treated cautiously. However, in conjunction with the survey findings and other evidence they suggest there is a serious problem in relation to the awareness and capacity of truck drivers, especially owner/drivers and those in small fleets, to exercise their right to workers' compensation when injured. The Inquiry believes this matter warrants investigation and action by WorkCover NSW.

A number of the observations just made are relevant to later sections of this Report. However, for the immediate purposes of this section it is enough to suggest we need to move beyond workers' compensation data to make an assessment of the extent of health and safety problems in the long haul trucking industry. The Driver Survey referred to earlier (see above and Appendix 3) sought to provide more detailed information on the pattern of injuries in the long haul road freight industry.

The Survey asked a series of questions about injuries, with around 25% of drivers reporting they had experienced a work-related injury or illness in the immediate past 12-month period (Table 12). Large fleet drivers cited more injuries in the immediate past 12-month period than did small fleet and owner/drivers. However qualitative data from the Survey indicated injury *types* and *severity* were similar across employment status groups, as were overall *incidence* patterns when 'yes injured' and 'usual little things' were combined. **The level of acute injury reported by long haul truck drivers (one quarter reporting an injury in the last 12 months) is significant, well above the norm, and suggests safety problems in the industry extend well-beyond the incidence of fatal crashes that tends to occupy public, media and policy-maker attention.**

Apart from WorkCover, very few parties to the Inquiry raised this issue. Again, as with the incidence of crashes it is hard to make international comparisons (though note some observations made about the US situation elsewhere in this Report). A French study of 1006 heavy vehicle drivers referred to earlier (Hamelin, 2000:23) asked them whether they had experienced a work-related accident but without specifying a time limit. Just over one third of

drivers (33.6%) stated they had experienced an accident. There was no significant difference in the overall response drivers with for-hire carriers and those working for not-for-carriers but over half of the drivers under 40 years of age reported an accident (with a somewhat higher figure for for-hire carrier drivers).

Returning to the driver survey, as can be seen in Table 11, owner/drivers had more 'little things' and the small and large fleet employee drivers checked the 'yes injured' box more frequently. One explanation for these minor variations in injury patterns is that normalisation of injury was more common amongst owner/drivers. While injury incidence and severity was similar across employment status groups, there were differences in levels of treatment.

Table 12 (Table 14 in Appendix 3):
Work-related injuries of 300 drivers in immediate past 12 month period

	Owner/drivers (n=99)	*Small fleet drivers* (n=104)	*Large fleet drivers* (n=85)	*Other* (n=12)
None	75.8%	74.03%	71.8%	100%
Yes injured	6.1%	15.4%	15.3%	-
Usual little things	22.2%	10.6%	12.9%	-
Total injured	24	27	24	-
% of drivers with any injuries	24.2%	26%	28.2%	-

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

Large fleet drivers sought treatment by a doctor/nurse/hospital more frequently than did small fleet drivers or owner/drivers. Similarly small and large fleet drivers more commonly declared that their injuries required time-off work while owner/drivers rarely took time off. A possible reason for these differences is that the acute financial pressures on owner/drivers (for truck repayments etc) means they are more liable to self-treat injuries or continue working while injured than those in a more secure situation (and with readier access to workers' compensation). Similar findings have been made in relation to self-employed subcontractors in other industries (Mayhew and Quinlan, 1997). This interpretation is supported by the pattern of chronic injuries.

Table 13 (Table 15 in Appendix 3):
Chronic work-related injury experiences of 300 interviewed drivers

	Owner/drivers (n=99)	*small fleet drivers* (n=104)	*Large fleet drivers* (n=85)	*Other* (n=12)
No	45.4%	51%	43.5%	75%
Yes back injury	35.3%	33.6%	23.5%	16.7%
Yes hearing loss	16.2%	19.2%	29.4%	16.7%
Yes other	15.1%	9.6%	16.5%	8.3%
Total	55	50	46	3
***%** with any chronic injuries*	55.5%	48.1%	54.1%	25%

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

Unexpectedly, the Driver Survey (see Table 13) found that chronic injury incidence was around double the level of acute injury or illness. Many drivers had more than one chronic problem (for a distribution of the major types of injury, see Table 13). **As the Survey itself noted (Appendix 3) the level of chronic injury amongst all groups of drivers is of grave concern. Overall, 55.5% of owner/drivers, 48.1% of small fleet and 54.1% of large fleet drivers cited a chronic injury, although the types of chronic injury varied across the employment sub-groups.**

Chronic back injuries were more common amongst owner/drivers (35.3%) and small fleet drivers (33.6%) than amongst large fleet drivers (23.5%) - differences which. This may reflect differences with regard to involvement in loading/unloading or improved access to mechanical loading/unloading equipment for drivers in larger operations. On the other hand, chronic hearing loss was more common for large fleet drivers (29.4%) than for small fleet (19.2%) and owner/drivers (16.2%). One possible explanation is a reporting effect in that more large fleet drivers have been scientifically tested for hearing loss and so the condition is liable to be more widely recognised amongst this group. **Most disturbing perhaps, seven of the 300 drivers interviewed commented on poor eyesight as a chronic injury. This has to be of concern to regulatory authorities as well as any road user.**

Surveyed owner/drivers were older, had worked in the industry for longer periods of time, had driven older less well-designed trucks more, and worked longer hours (see Tables 4,5,9 & 11 in Appendix 3) which meant they had been more exposed to hazards and risks. These characteristics appear to apply in other countries. For example, Labour Force Survey statistics for Canada also indicate that self-employed truck drivers worked appreciably longer hours on average than employee drivers (Bess, 1999:16).

2.1.2.2 *Distress and Suicide: Other indicators of the health and well being of long haul truck drivers*

Injury risks are by no means the only significant health and safety problem confronting long distance truck drivers. Aside from working far longer hours than most other workers there is also a perception that drivers operate under considerable stress due to factors such as time spent away from their families, tight schedules etc. To gain some reliable evidence on this, the 'General Health Questionnaire' (GHQ) was administered as part of the survey of 300 drivers already discussed. Designed two decades ago the GHQ is a simple but reliable (it has been exhaustively assessed) and internationally accepted tool (with benchmarks) for assessing the current mental health status of interviewees. Past studies have indicated that a score of around 8.59 is relatively normal, and a score greater than 14 is so clinically significant that the person probably requires urgent medical treatment. A high total score on the GHQ not only estimates current mental health status but also predicts future negative physical health impacts from this. For reasons identified in the full survey report (see Appendix 3) using the GHQ in relation to blue-collar workers like truck drivers is not unproblematic and therefore some caution is warranted in interpreting the findings. Nonetheless, the GHQ was the most reliable instrument available and, as far as can be determined, no comparable evidence has previously been collected in relation to long distance truck drivers in Australia.

For the 290 drivers who completed the GHQ, the overall mean was 10.3, which would be regarded as high compared with many other groups (reasons for this are explored below). When broken down by employment status the mean score for owner/drivers was 11.5, 9.8 for small fleet drivers and 10 for large fleet drivers. Table 14 (reproducing Table 28 of the Driver Survey in Appendix 3) separates the results by the highway on which individual drivers were working on the day/night of interview (results for the Sturt and Great Western/Mitchell highways, and in the greater Sydney area should be treated with caution given the low number of respondents). As can be seen owner/drivers had higher mean scores than employee drivers for all routes. At the same time, the highest mean GHQ score recorded for owner/drivers was

on the Hume Highway and it was this route that also recorded higher mean scores for employee drivers, especially those working for large fleets.

Table 14 (Table 28 in Appendix 3):
GHQ mean scores - employment status by highway

	Owner-drivers (n=93)	*Small fleet drivers (n=103)*	*Large fleet drivers (n=82)*	*'other' drivers (n =12)*	*Total drivers (n=290)*
Hume highway	13.1	10.2	11.6	10	11.8
Newell	11.3	9.1	10.6	3.5	9.8
Pacific	11.2	8.9	8.7	7	9.4
New England	10.4	12	8.8	-	10.5
Sturt	7.6	8	9.1	5.2	8.1
Great Western and Mitchell	9.3	12.4	10.4	15	11
greater Sydney	11.2	9	9.2	-	9.6
overall	11.5	9.8	10	6.7	10.3

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

As identified in the Driver Survey Report (Appendix 3) the Hume highway has distinctive characteristics, being the major route between Australia's two largest cities (Melbourne and Sydney) and carrying far more long distance heavy vehicles per 24 hours than any other route. Apart from a section near Albury the highway is dual carriageway throughout (relatively unusual in Australia given its small population and the vast distances of many routes). For a variety of reasons (including the distance of just below 1000 kilometers and customer demands) the majority of heavy vehicles are driven overnight. The Driver Survey Report (Appendix 3) identifies a number of other critical features:

Because of the high volume, truck drivers can virtually always get return loads the next day. As a result many drivers routinely drive 6 legs a week – and hence they do not get held-over waiting for loads as they might in Brisbane or Adelaide; simultaneously drivers do not get long rest breaks waiting for loads. Many truck drivers interviewed commented on the Hume highway being dual carriageway throughout with few towns – which was therefore to some extent 'boring' to drive on. Finally, freight-forwarding agents organising consignments along the Hume highway offer very competitive freight rates. Quoted rates on offer have ranged from $1.65 per km, to $1.10 per km, and even down to $0.98 per km. The type of vehicle generally determines the size and weight of potential loads, with B/doubles having a larger capacity.

In short, the Hume Highway is busy, intensely competitive and involves a lot overnight driving to meet short deadline schedules. The pressures this puts on truck drivers are well known to older drivers. More than a few of the experienced owner/drivers who made submissions to the Inquiry volunteered that they avoided this route and favoured longer routes where they had more control over how they planned their trip and when they took rest breaks. The highway has a longstanding reputation as being a place for younger drivers. **Amongst drivers and operators alike the Hume Highway is colloquially known as 'Sesame Street' or as one driver put it 'where the young come out to play'.** The presence of so many young inexperienced drivers and dangerous practices (such as speeding and drug use) frankly frightened older drivers who were worried about being 'taken out' by another truck. An owner/driver summed up his views:

I run Melbourne/Brisbane most of the time, sometimes into North Queensland. Most of the older drivers seem to congregate in that particular neck of the woods as opposed to the Hume

Highway. [and in response to the question - 'why is that?'] *I will give you a blunt answer ... it's a lot of younger drivers - most of the older blokes tend to steer away from this side of it because of the enforcement, because of the ratbag element and that is not the majority - that is just a minority… Yes it's the nursery.* (oral submission, southern NSW based-driver of 30 years experience, previously as employee driver now owner/driver).

The underlying reasons for high GHQ scores will be examined in detail in a later section of this report.

Aside from the GHQ scores there are other indications of the pressure on long distance truck drivers. One disturbing piece of evidence presented to the Inquiry was in relation to suicides amongst truck drivers (though this data was not confined to long haul drivers). **A Death Claims Report on the TWU Superannuation Fund (Cescon and Nelson, 1999) identified suicide as the cause of death in 10% of cases or over three times the national average of 3.2% for Australian males. The Fund had examined 452 of the 491 claims received between 1 July 1995 and 9 July 1998 and suicide emerged as the fourth most frequent cause of death.** Victoria recorded the highest number of suicides followed by South Australia, Queensland and New South Wales. The Report noted that suicide figure could be as high as 30% of claims received by the fund because the original figure excluded cases under coronial investigation and those classified as 'unknown' or 'drug overdose', all of which could include suicides. In other words, the 10% figure is a cautious estimate that almost certainly understates the number of suicides.

Those drivers (all male) committing suicide were young (18 to 35 years old) and had young children (when combined with coronial investigation cases they left 239 dependents or 30% of the total dependents left behind). In most cases where the TWU Superannuation Fund carried out further investigation it was found that the driver had recently (ie within six months) had a break down of their marriage or de facto relationship. Moreover it was ascertained that the drivers were under severe financial pressure. It may be deduced that the financial pressures would have substantially contributed to the relationship problems and the resultant suicides.

For every driver that commits suicide, there are likely to be many more who are under similar pressures. The evidence presented here is by no means comprehensive (many drivers, especially owner/drivers, would not belong to the TWU Superannuation Fund) but neither is it a small unrepresentative data set. **The level of suicides identified in TWU Superannuation Fund represent a sad and alarming set of statistics that certainly warrants further investigation, especially as it is consistent with other evidence of pressure on drivers presented in this Inquiry Report.**

2.1.3 Insurance Claims/Premiums/Cover and the Economic Costs of OHS Problems in Long Haul Road Transport

In addition to direct measures of the incidence of death and injury, there are other measures of the extent of safety and health problems in the long distance trucking industry. One such measure is the extent of (and historical trends) in relation to various kinds of insurance cover (compulsory third party, comprehensive vehicle and workers' compensation) carried by road transport operators. A related issue is the extent to which all operators take out cover. Compulsory third party insurance (CTP), as the name implies, is a non-optional cover to protect third parties (pedestrians, passengers or other vehicle users) injured by a vehicle or in the collision between several vehicles. Without CTP a vehicle cannot be registered (ie given the legal entitlement to be driven on NSW or other roads). Comprehensive policies insure against damage done to the vehicle and other vehicles in the case of a multi-vehicle incident where the driver of the insured vehicle is at fault (third party property insurance insures only against damage done to property/other vehicles). Comprehensive insurance is optional but

clearly an operator without this cover is running a high risk of financial loss (and perhaps bankruptcy in the case of a single owner/driver) if the vehicle is severely damaged or 'written-off' in a traffic incident. Further, it is standard practice for finance companies to make ongoing comprehensive insurance a condition of lending funds to purchase a truck. Finally, as is the case with other employers it is compulsory for all transport operators with employees to take out workers' compensation cover. As noted already, this compulsion does not apply to owner/drivers (unless they also employ other drivers). These drivers may take out workers' compensation cover or private accident insurance. However, as already pointed out, a not insubstantial number have no cover whatsoever (meaning the costs of severe injury will fall on them and their dependents, the public health (ie Medicare) system and the federal social security system in the case of long term/permanent disability).

MAA CTP claim figures demonstrate that the frequency of claims by heavy vehicles is more than double that of the rate for Sydney passenger vehicles. Further, the average size of claims for trucks over two tonnes was $60,799 in September 1999 compared to the average car claim of $47,673 (*InforMAAtion* 33).

Trends in the costs of insurance claims are influenced by a range of factors not only the number and severity of crashes involving heavy vehicles. However, the trends identified by insurers and the MAA is disturbing and certainly not indicative of an improving level of safety performance. Indeed, both the MAA and road transport insurers have seen this trend as evidence of a serious situation that needs to be addressed - a view with which this Report would concur. Further, irrespective of its origins the translation of additional claim costs into higher premiums will place a heavier financial burden on operators, which as this Report will show, are already engaged in intense competition.

Some insurance companies have moved to charge higher premiums on owner-drivers because of their higher claim rate. There were also significant disparities between well-run (usually large) fleets and smaller fleets.

Our experience has shown us that well run large fleets are a much better risk than owner/drivers or poorly run fleets. Typically the average cost of claims in a good fleet is 15% below that of owner/drivers and poorly run fleets. More importantly the claim frequency for good fleets is 20% better than the average while owner/driver and poorly run fleets are approximately 20% worse than average. The combined effect of claim cost and claim frequency means owner/drivers and poor fleets should be paying significantly more than the premium a good fleet should pay. Restrictions in the current Bonus/Malus system prevent us from doing so (written submission, John Vallance, MMI).

Quite apart from trends in claim costs and premiums there is a need to consider the issue of insurance cover. With regard to CTP the situation would at first sight appear to be unproblematic as this insurance is compulsory in order to have a vehicle (truck or other type) registered and insurers cannot refuse to offer CTP to an operator. However, unregistered vehicles are not unknown. Indeed, a survey of over 40,000 vehicles undertaken by the RTA in 1992 identified 1.82% vehicles as unregistered, with subsequent surveys in 1998 and 1999 yielding similar though slightly higher figures (1.85 and 1.89% respectively). These figures do not differentiate type of vehicle. Although it might be presumed that the running of unregistered heavy vehicles in the road transport industry is rare, this is supposition. Certainly, the problem has been a cause for concern outside NSW with unregistered vehicles and non-payment of third party insurance being one of a number key areas targeted under the randomised enforcement strategy (REDS) of the RTA's Queensland counterpart, Queensland Transport (written submission, page 25).

The question of comprehensive insurance is quite another matter. An insurer is under no obligation to offer cover. In recent years the number of companies offering insurance to the

heavy vehicle/long distance trucking industry has declined from around 17 to just five. During the course of its investigation the Inquiry spoke to representatives of virtually all the remaining companies. Discussions with these representatives, corroborated by other evidence, indicated that companies were becoming much better informed about factors affecting claims rates and more selective in offering cover. That is, after a long period where they admitted undertaking inadequate research and monitoring of the performance of particular categories of operators (by size, primary activity etc) and drivers (employee or owner/driver, casual or permanent) these matters were now being addressed. The prevailing view amongst insurers was that the claims record of a section of the industry was so poor as not to justify cover or continued business. One consequence of this was that a number of transport operators have found it increasingly difficult to get or retain insurance cover with the same company. Some, including at least one large operator were effectively 'shown the door' by their insurer (by demanding an inordinately high premium known to be unacceptable).

A representative from one of the larger insurers (written submission, Owen Driscoll, NTI Ltd) noted that the register of direct 'insurance declines' was growing continuously as heavy vehicle insurers avoided firms known to operate on the 'edge'. Given that all insurers were returning poor underwriting results, one decline could have a cascading effect as other insurers followed suit, leaving the operator unable to find an insurer or to afford a premium commensurate to the risk. Confirming this, another insurance representative stated that this year six trucking companies could not buy insurance from any of the five companies and this was a first in his experience (oral submission, Dean Croke, MMI/Allianz Australia). In the view of this representative and a number others spoken to, competition amongst insurers for business had kept insurance rates at artificially low levels in the past (the smaller number of insurance firms now operating has also enhanced their ability to identify high-risk operators).

As already noted, while comprehensive insurance is not compulsory it is essential when financing the purchase via a loan from a recognised lending institution. For some owner/drivers and firms the inability to obtain cover or only at a very high price can lead to a loss of truck-financing arrangements and this, in turn, can effectively mean bankruptcy (ease of entry and bankruptcy is addressed elsewhere in the report). However, other operators will be able to run 'uninsured' either because they own their truck, have other sources of finance, or are able to keep this information from the finance company. With regard to the latter point, one insurance company argued that finance companies had become less resolute about chasing up this information:

Gone are the days where financiers sought and demanded confirmation of insurance cover, with the threat of repossession. Needless to say this allegedly is now not occurring and indications are that some financed equipment continues to be operated without insurance. Many operators confirm that they seldom hear from their financiers on this subject these days (written submission, heavy vehicle insurer).

It could be argued that the growing selectivity on the part of insurers is actually a good sign as it will eventually drive unsafe operators out of the industry and send a clear market signal to others to lift their performance. While this might be true to some extent two important caveats need to be noted. First, given the ease of entry into the industry such departures may be easily be replaced by new operators who ultimately prove to be equally unsafe and the resulting turnover may make it actually more difficult to lift overall safety performance. The previous history of the industry is far from ruling this out as a scenario, quite the reverse. Second, if anything the extent to which some operators are able to carry one business while uninsured is, from a public safety as well as OHS perspective, even more worrying. Such operators are likely to be confined to the very margins of the industry in terms of contracts and legality, with predictable safety consequences. The Inquiry was unable to obtain any detailed information on the number of operators without comprehensive insurance. A number of insurers expressed a belief that the number of uninsured operators was growing (similar views

were expressed by several other parties). The Inquiry was also told of cases in the far west of the State where a vehicle sustaining serious damage (but not serious injury to the driver or other road user) at certain times could be removed before it was the subject of an RTA or police report/surveillance. In the absence of more evidence, the Report can express no view on the matter except to say that it warrants further investigation given the serious consequences that are likely to flow from a significant or growing number of uninsured operators.

The third body of insurance is that related to the workers' compensation cover carried by firms with employee drivers or taken out by owner/drivers, with the latter also being able to take out private accident insurance. In its submission (page 2) the Insurance Council of Australia stated that the workers' compensation premium in NSW for "carrying/carting" had increased from 8.36% of wages to 9.4% of wages in 2000/2001 which represented one of the highest rates determined by the NSW WorkCover Authority. While long haul trucking represents only one part of this category, this provides further evidence of the poor safety performance of road transport. Moreover, there is evidence of similar trends in other jurisdictions. For example, between 1994 and 1997 road transport represented the second most costly industry in terms of workers' compensation claims in South Australia. Keith Brown, the CEO of WorkCover South Australia (1998), noted that road transport made up a disproportionately large share of workers' compensation claims and costs in South Australia, had an elevated risk of worker fatality, and the growth of claim rates and costs was outpacing the expansion of the industry. In Queensland, too, analysis of data for the year 1996-97 indicates that both the number of injuries and the number of severe injuries per 100 workers in transport and storage was significantly higher than the all-industry average. The average duration of absence resulting from injury in transport and storage (68.4 days) was also significantly higher than the all industry average (50.4 days). Road transport workers accounted for 44.3% of all injuries in the transport and storage classification, with truck drivers alone accounting for 25% of all injuries (Queensland Division of Workplace Health and Safety, 1998).

As already noted the costs (and therefore premiums for the industry as a whole) associated with workers' compensation are understated because not all work-related injuries (including serious injuries) by truck drivers result in a workers' compensation claim. The Inquiry also received evidence that some smaller transport companies might not carry the requisite workers' compensation policy (running the risk of detection and being fined by WorkCover) or discouraged drivers from making claims. These problems are liable to be more pronounced in long haul than other areas of road transport due to the greater prominence of self-employed drivers and regional transport companies (that are less likely to be unionised and whose workers have fewer alternative job opportunities than those in major urban centres). As noted in the survey commissioned for this Inquiry, over 20% of employee drivers in small fleets were either unsure of their cover under workers' compensation or believed/had taken out some other form of cover. With regard to owner/drivers only 38% had taken out/or believed they were covered by workers' compensation, 42% had private insurance, around 9% were unsure of their coverage and 6% admitted having no cover whatsoever. As indicated by previous research even this understates the problem because not all owner/drivers with formal cover will make claims for reasons such as the need to maintain income and a fear of losing future work.

Direct insurance costs represent only part of the total economic costs associated with safety and health problems in the road transport industry. Quite apart from its costs in terms of injury, death and associated suffering, the health and safety burden of crashes etc in the long distance trucking industry can also be measured in economic terms. The cost to the community when a trucking accident takes place – apart from tragic loss of life - includes the cost of police, ambulance, fire brigade, towing and repair, loss of produce and production. Some of these hidden costs are substantial. Even a small amount of time spent at an accident

scene by emergency services is costly. In NSW there are at least 75,000 vehicle incidents per year requiring a tow truck. The Transport Management Centre estimated that a saving of 15 minutes in dealing with each accident that takes place in the greater Sydney area in each year would save approximately $846.45 million over that period (information provided by the Tow Truck Authority of NSW). No estimates are available for incidents involving articulated trucks or other heavy vehicles but it can be presumed it is substantial, especially given the tendency of truck incidents to be more serious in terms of damage to vehicles, towing expenses and injuries to those involved. In the case of death or serious disablement there are hidden but substantial costs in terms of the loss of skilled and experienced workers (both truck drivers and other road users) which insurance payouts seldom match. There is also the potential for very long term effects resulting from disruption to families and the education of children that accompanies death or disablement to the primary breadwinner.

Other losses include the loss to the taxpayers via Medicare where an injured party is not covered by workers' compensation. There are also increased insurance premiums for the general public when trucks are uninsured. If the industry is not economically viable operators will cut costs on things like comprehensive insurance. This amounts to a gamble with the public interest, the operator gambling that the vehicle will not be involved in an accident. The insurance industry has estimated that approximately 20% of the industry does not have comprehensive insurance. By failing to have proper insurance cover, this section of the industry is requiring the broader community to pay higher premiums to offset their shortcomings.

Estimating the full economic costs of health and safety is a difficult exercise, since many indirect costs are difficult to identify let alone measure, and as a result underestimation is a common problem (the same applies to trying to measure the economic benefits of improved health and safety performance). A major report into OHS by the Industry Commission (1995) estimated that the indirect costs may outweigh direct costs (such as workers' compensation) by a ratio of three to one and this is in line with estimates by other research, both in Australia and overseas. The Bureau of Transport Economics reported that the total cost of road crashed in 1996 was $15 billion dollars.

More so than many other industries, road transport entails a significant element of public safety. In road transport many of the victims of truck-related incidents are other road users and so this calculation has to be added to those costs involving drivers and their families (there are also environmental costs).

In its 1989 report, *Concerning Alert Drivers and Safe Speeds for Heavy Vehicles*, STAYSAFE (the Parliament of New South Wales Joint Standing Committee on Road Safety) used data from a variety of sources to estimate the cost of crashes involving articulated trucks in New South Wales. The report estimated that the total cost of casualties from crashes involving articulated trucks in 1988 was $106 million, consisting of 151 fatalities (at an average cost of $486,000), 277 hospital admissions (average cost $99,000) and 492 other injuries (average cost $11,000). Using base information from the Road Safety Authority (later taken over by the RTA) STAYSAFE estimated that the average cost of crash involvement of articulated trucks was 7.6 cents per kilometre (calculated by dividing the $106 million by 1.4 billion kilometres travelled. *STAYSAFE 15*, 1989:3). Thus, the safety costs for a truck on a typical trip of around 1000 km (the approximate distance between Sydney and Brisbane) was $76 or $23,000 if the truck completed 300 such trips in a year. It should be noted in passing that these figures are expressed in terms of 1989 dollars and converting them into 2000 dollars would result in substantially higher figures.

It should be noted that any attempt to estimate the total cost of safety problems in the long distance trucking industry needs to include some estimate of indirect as well as direct costs. These include substantial costs arising from the lost output of injured workers. In the United

Kingdom the Department of Environment, Transport and Regions recently estimated the value prevention of a fatal road casualty at £1 million (or around $2.8 million), with more than £300,000 of this being comprised of lost output. An effort must also be made to factor in the considerable number of injuries that result in no workers' compensation or insurance claim.

Table 15: Casualty Costs Per Person

Casualty Type	$
Fatality	771,800
Admitted Injury	131,800
Treated Injury	8,600
Non-treated Injury	1,010
Not Injured	390

Source: ARRB, Preliminary costs for accidents-types, Research Report 217, 1992
Indexed using estimates of Average Weekly Earnings (AWE) for NSW, ABS Catalogue no. 6302.0

The RTA publishes economic costs of crashes in *RTA Economic Analysis Manual, Version 2, 1999* for evaluating the savings in accident costs on new road projects. Table 15 indicates the casualty costs per person while Table 16 indicates the generic costs per accident. Using these tables as a basis for calculating the cost of fatalities involving articulated trucks, it can be noted in 1999 the 189 fatalities Australia-wide cost $145.87 million while the figure for NSW alone was $49.39 million (or $10.03 million for truck drivers and $20.07 million for other road users).

Table 16: Generic Costs Per Accident

Casualty Type	$
Fatality	937,000
Injury requiring hospital admission	175,000
Injury requiring medical treatment	27,000
Injury not requiring medical treatment	17,000
Tow away	12,200

Source: Based on 1997 RTA accident data and costs by casualty class from Andreassen, D. Costs for accident types and casualty classes, ARR 227, ARRB TR 1992, updated for 1999 values.

Using Table 16, the RTA estimates would indicate that total cost of fatal crashes involving articulated trucks in 1999 was $151.79 million for Australia as a whole and $52.47 million for NSW. According to these tables the total cost of non-fatal (hospital admission) casualties from crashes involving articulated trucks in NSW in 1999 was $100.95 million while the total cost of casualty crashes was $97.12 million. In other words, RTA estimates would indicate that the total cost of fatalities and casualties due to crashes involving articulated trucks in NSW in 1999 was over $150 million and basing the figure on the generic cost of crashes yields a very similar figure. To gain the full costs would require adding the cost of more minor injuries, tow away costs and fatal/casualty crashes involving heavy rigid trucks used for

long haul freight tasks (and deducting the number of articulated trucks involved in fatal/casualty incidents that were not engaged in long haul).

In addition to the direct and indirect costs of those injured or killed in incidents involving heavy rigid and articulated trucks, there are other costs. These include those arising from vehicle damage, cargo loss, vehicle replacement, business disruption (especially in the case of small operators) and the loss skilled of professional workers (both truck drivers and others). Information provided to the Inquiry by the RTA and based on data supplied by one insurer indicated that the average cost of repairing a truck over 13 tonnes GVM was $12,409. The Inquiry was unable to obtain recent information on cargo loss and vehicle replacement. In 1991 Cairney (1991:14) that vehicle damage, cargo loss and vehicle replacement amounted to between 17% and 21% of the fatality/injury costs of smashes involving articulated trucks (with the higher figure applying to non-metropolitan crashes). If these ratios were to hold they would add another $30 million to those figures just cited for the year 1999.

All the estimates just cited should be treated with caution. Nonetheless, they indicate that crashes involving articulated trucks entail a substantial cost on Australia, and NSW in particular. Even a small improvement of say 5 to 10% would bring substantial economic savings to the community. Such savings need to be borne in mind in any debate over the 'costs' of improving safety performance in the long haul trucking industry.

2.2. THE NATURE OF HEALTH AND SAFETY RISKS IN LONG HAUL ROAD TRANSPORT

During the course of its investigation the Inquiry collected written and oral submissions as well as other evidence on different safety and health problems in the long distance trucking industry (for both drivers and other road users), as well as the immediate risk factors contributing to unsafe practices. An example of the latter is long hours of work and its connection (along with inadequate rest, irregular shifts and the timing of work) to fatigue, which in turn has an array of long and short term effects of driver safety, health and well-being. The term immediate risk factors are used here to distinguish them from underlying causes. For example, demonstrating a link between long hours of work/inadequate rest, driver fatigue and truck crashes is important but it is at least as important to explore why drivers are working such hours or getting inadequate rest. Absence of the latter information not only results in a partial explanation but may also lead to policy interventions that fail. For example, if there are strong pressures for drivers to work long hours the implementation of a fatigue management regime that fails to address this is unlikely to succeed. The terms of reference for this Inquiry directly addressed this issue, explicitly requiring an investigation of links, if any, between a range of commercial and industrial practices in the transport industry (and the array of parties involved in these arrangements) and safety.

In relation to the last point it should be noted that, while a number of issues will be touched on in this section, detailed analysis of the link between commercial practices and safety will be pursued in the following section of the report (and built on in subsequent sections). The primary purpose of this section is to examine the extent and scope of safety and health problems in the long distance road freight sector, and in so doing, provide a better understanding of the issues that need to be addressed. During the course of its investigations the Inquiry received submissions on a wide range of safety issues. This section provides an overview of these issues with some effort to assess their importance, using both the submissions themselves (a number from experts in the field) as well as other information, most notably:

- data derived by a general OHS survey of 300 long distance truck drivers carried out as part of the Inquiry by Dr Claire Mayhew (see Appendix 3) and another survey of around

1,000 drivers carried out by Dr Ann Williamson and colleagues for the NRTC (and more focused on the issue of fatigue);
- the published scientific literature on truck driver health and safety, both in Australia and overseas ; and
- earlier reports and government inquiries which addressed safety in the long distance trucking industry in various Australian jurisdictions over the past 20 years.

The survey data should be viewed as a central part of the Inquiry process itself. The two other additional sources just mentioned provided the opportunity to assess submissions to the Inquiry in terms of their consistency with other available evidence, the relative importance of the issue, and helped to identify any trends in relation the nature or incidence of the problem. By drawing on earlier reports and inquiries this Inquiry sought to place its own findings in context, to give a picture of long-term debates about safety in the industry (and one beyond the confines of NSW) and avoid a reinvention of the wheel. This practice will be followed by subsequent sections of this Report.

In sum, what follows is a discussion of various safety issues affecting the long distance trucking industry. For convenience, the most prominent risks to safety in the trucking industry, like speeding, fatigue and drug use are discussed separately even though there are important interrelationships (most obviously between fatigue and drug use). These links are, however, not ignored in this section of the Report, being identified and assessed at a number of points. These and other inter-linkages are explored in more detail in subsequent sections.

2.2.1 Long Hours, Sleep Apnea and Fatigue

Truck drivers are the galley slaves of the twenty first century (oral submission, wife/partner of owner/driver)

At the present time the long haul road transport industry is virtually unique in terms of standard working hours. Under current regulations truck drivers are permitted up to 12 hours in a day and 72 hours a week (almost twice the standard hours of many other workers) in New South Wales and other states. A similar limit applies in Canada and slightly more stringent limits apply in the USA (where the maximum is 60 hours per week) and the European Union. What is more, the maximum does not amount to a remote maximum limit that is seldom met. Rather, there is clear evidence from surveys spanning back well over a decade that the bulk of the truck driving workforce work close to this limit, with a sizable number substantially exceeding it on a regular basis. The high incidence of offences by drivers in relation to logbooks (a primary device used in driving hours compliance) provides additional evidence of this. In a survey of 820 drivers Hensher et al (1991:61) found 41% had received logbook fines in the past year, with the incidence being highest amongst small fleet drivers (53.5%) and lowest amongst large fleet drivers (31.1%). Long hours of work are, as already implied, not confined to truck drivers in Australia but also apply to drivers in Europe and North America. In Canada, Labour Force Survey statistics indicate that 'for-hire' drivers work considerably longer hours on average than other truck drivers (Bess, 1999:16). The Inquiry is unaware of comparable data for Australia but would suggest a similar situation is likely to apply in this country. The same Canadian survey (Bess, 1999:16) found that long haul truck drivers were most likely to be found amongst the 31% identified as working 60 or more hours per week in 1998.

It needs to be emphasised that long hours behind the wheel (12-14 hours in a day and up to 72 hours a week under the current regulations) do not capture the full workload of long distance drivers. In addition to driving, drivers often spend considerable time loading/unloading and, especially in the case of owner/drivers, undertaking vehicle maintenance. Further, other time is spent waiting in queues at depots or client warehouses. These, again, are long term features of the industry. In their pilot study, Hensher and Battellino (1990:549) found that 80% of

owner/drivers were involved in loading and 60% were involved in unloading at their destination while the comparable figure for employee drivers was 60% for both loading and unloading. As might be expected owner/drivers spent almost three times more time on maintenance than employee drivers though when it came to time spent waiting the situation was reversed with employee drivers reporting spending far more time in queues (Figure 5 in Hensher and Battellino, 1990:549).

Driver fatigue has a number of profound effects on safety and health, including increasing the risk of crashes as well as encouraging drug-use and other hazardous practices on the part of drivers. The latter may include the practice of "slipstreaming" where trucks travel nose-to-tail such as allegedly occurred when six semi-trailers and a rigid truck collided on the Hume highway near Albury in June 2001 (*Daily Telegraph* 15 June 2001). Though "slipstreaming" has often been seen as a device for saving fuel it has been suggested the principle factor underpinning the practice is an attempt by drivers to keep together in order to combat fatigue. Whatever the merits of these contentions, there can be little doubt that driver fatigue increases irritability and already substantial strains on work/non-work balances (due to long periods of absence from family) as well as having long-term health effects. Along with speed, fatigue has seen to be a serious factor in heavy vehicle crashes. An investigation of heavy vehicle crashes in NSW in 1988/89 found 60% involved an element of driver fatigue (Sweatman et al, 1990 cited in Hensher et al, 1991:53). Other estimates have attributed 20-30% of highway fatalities and 40-50% of fatal single vehicle crashes to fatigue and these figures may underestimate the impact of some fatigue symptoms such as impaired judgement or anticipation (STAYSAFE, 1989 and McDonald, 1984 cited in Hensher et al, 1991:53). Using coronial records in Victoria, Haworth et al (1989) found that coroner's attributed fatigue as the cause in 9.1% of fatal heavy vehicle crashes but their own judgement of the evidence placed the figure at almost 20%. A survey of NSW truck drivers by Linklater (1980) concluded that drivers who spent over 55 hours at the wheel were more likely to be involved in crashes. A number of studies (see for example Haworth et al 1989 and Hensher et al 1991) noted drivers themselves tended to substantially underestimate the risk of fatigue.

Other research has helped to indicate why fatigue is so dangerous. A number of studies have compared the extent to which fatigue and alcohol consumption impair driving performance. For example, a recent study for the Australian Transport Safety Bureau by Williamson et al (2000a) found after 17 to 19 hours without sleep impaired performance on some tests corresponded to that associated with the current legal blood alcohol concentration (of 0.05%) while longer periods without rest led to results comparable to those receiving the maximum alcohol dose (0.1% blood alcohol concentration). In other words, like alcohol fatigue had the capacity to seriously impair driver performance and the periods without rest where these effects become serious are by no means atypical in the long haul transport industry.

The importance of fatigue as a safety factor in trucking has been confirmed by overseas studies. For example, an analysis of 186 truck driver fatalities in heavy vehicle crashes in the USA by the American National Transportation Safety Board (1990 cited in Frith 1994:19-20) cited fatigue as the probable cause in 57 (or 31%). More recently, the US Department of Transportation (US DOT, 2000) has reported that truck driver fatigue is the main contributing factor in 15% of all commercial vehicle accidents, accounting for 755 deaths and 19,000 injuries each year. The Department argued fatigue was a growing factor in accidents in all modes of transportation.

International studies of truck drivers (McDonald, 1984; Jones and Stein, 1987; Lin et al, 1993; Frith, 1994) have identified a significant and progressively higher risk of crash involvement (by an order of two to three) as the period of work without a break extends beyond 8-10 hours. A case control study of truck drivers in New Zealand (Frith, 1994) confirmed previous international research that driving time since the last significant period

had the strongest effect on crash risk. A US study by Mackie and Miller (1978) found fatigue effects became evident prior to 8 hours when drivers were on irregular shifts.

In addition to the length and irregularity of shifts, there is also strong evidence that the timing of the shift also affects the risk of being involved in crashes. International evidence indicates night driving entails a substantially greater risk of crashing (twice as high according to McDonald, 1984) and is worst between 2am and 7am where circadian rhythms mean driver alertness is at its lowest (Abkowitz, 1989 cited in Hensher et al 1991:68. See also Harris and Mackie, 1972). The last point is especially significant given the emphasis on overnight freight (the additional risk may be partly offset by the additional traffic encountered at daytime although this effect is yet to be measured).

Overall, research on long distance trucking that highlights the increased risk of injury associated with long hours, irregular shifts and night work parallels the findings in relation to workers engaged under similar arrangements in other industries (Folkard, 2000). However, it can be argued that long distance trucking represents an extreme case because of the exceptionally long hours in comparison to other industries and the combined effects of all three factors just mentioned.

Table 17 provides evidence on the number of crashes where fatigue was deemed to be a major contributing factor (a looser term than suggesting fatigue caused these incidents) in heavy vehicle crashes in Australia in selected years between 1990 and 1996. These indicate that fatigue was a significant contributor to just over 10% of heavy vehicle crashes that was higher than the equivalent figure for all vehicle crashes. Further, in this admittedly short time frame there is no evidence that the impact of fatigue was declining. However, it should also be observed that even in heavy vehicle crashes the fatigue contribution applied to the driver of the 'other vehicle' in around half (the small numbers mean these figures should be treated with caution Smith 2000:5, Moore and Brooks, 2000:2).

Table 17: Fatigue and crashes, all crashes and heavy vehicles, Australia 1990, 1992, 1994, 1996

Year	All Crashes	Fatigue	Per cent	Heavy Vehicles	Fatigue	Per cent	LV fatigue	HV fatigue
1990	2010	123	6.1	217	22	10.1	15	7
1992	1688	97	5.7	163	16	9.8	7	9
1994	1682	128	7.6	160	15	9.4	8	7
1996	1767	149	8.4	166	18	10.8	11	7

Source: ATSB: FORS fatality database 1990, 1992, 1994, 1996 reproduced in Smith (2000:5)
Notes: heavy vehicle: articulated truck or long distance coach
Fatigue is coded where driver fatigue has been nominated as a major contributing factor to the crash

This Inquiry received further information from the RTA on the number of fatigue-related casualty crashes (ie death or injury causing) by both heavy trucks and articulated trucks on NSW roads for the six years 1993 to 1998. In this period there was an annual average of 1,041.8 casualty crashes involving heavy trucks. Of these, the RTA stated that fatigued heavy truck drivers were involved in an annual average of 80.8 casualty crashes (or 7.6% of the total) with drivers of articulated trucks accounting for over two thirds of these crashes (an annual average of 58.7 or 5.6% of the total). Crashes involving fatigued heavy truck drivers accounted for annual average of 98.3 casualties, with those involving fatigued articulated truck drivers accounting for 68.5 or (again) over two thirds of casualties. The RTA argued that over the six-year period there had been a tendency towards an increasing number of

crashes and casualties involving fatigued articulated truck drivers (written submission, RTA page 6).

The importance of fatigue in serious truck crashes is emphasised by information provided by other jurisdictions. In its written submission (Attachment 2) Victorian WorkCover noted that between 1993/1994 and 1996/97 there were 77 work-related fatalities in the transport industry. In 28 cases (or 37%) fatigue was identified as a factor and 20 of these cases (or 26% of the total) involved trucks, single vehicle truck crashes accounting for 16, representing 57% or over half of all fatigue-related fatalities in transport and 75% of all fatigue-related truck deaths. Of the remaining four fatigue-related truck fatalities, two entail multi-vehicle incidents, one involved a truck/train collision and one involved a truck hitting a pedestrian. In its written submission Queensland Transport also emphasised the serious relationship between fatigue and truck crashes. It noted that Queensland data for the period 1992 to 1998 12% of crashes involving articulated trucks were attributed to fatigue, compared to only 2% of bus and coach crashes (written submission, Queensland Transport page 7).

Both FORS and RTA estimates of the number of fatigue-related crashes should be regarded as conservative because they only include cases where fatigue was deemed to be a major contributing factor to the incident. In an unknown number of other cases fatigue made a less significant contribution to the incident, serving to exacerbate other problems. Further, crashes are only one outcome of fatigue.

As fatigue in the transportation sector was the subject of recent federal inquiry by the House of Representatives Standing Committee on Communications, Transport and Arts (*Beyond the Midnight Oil: Managing Fatigue in Transport*, 2000) this Report does not wish to belabour discussions of the extent of fatigue problems. Nevertheless, a study that has only recently become available is worthy of mention. The Inquiry was able to obtain more information on the fatigue problem from a national survey of just over 1000 long distance truck drivers undertaken by Drs Ann Williamson, Anne-Marie Feyer and two colleagues for the National Road Transport Commission. This recent study focused specifically on fatigue and, most valuably was benchmarked against a similar survey undertaken in 1991. The study (Williamson et al, 2000) found that there had been an increase in the amount of work required of long distance drivers since the earlier survey, entailing considerably longer trips and with drivers reporting an earlier onset of fatigue. Most drivers did at least some midnight to dawn driving and over 20% had exceeded the 72 hour limit of current working hours regulations in the week before they were surveyed (a greater proportion of owner/drivers in the second survey may partly explain this result). About a quarter of the drivers surveyed admitted breaking driving hours-regulations on every trip.

One especially disturbing survey finding was that one in five drivers reported a fatigue-related dangerous event on their last trip such as crossing lanes, nodding off or near misses. In other words, potentially serious lapses of concentration are a relatively common experience for truck drivers. While periodic lapses of attention or even ‘mini-sleeps’ are known to occur amongst other transport operators such pilots and train drivers (especially at night), it is arguable that the risks are greater for truck drivers (and the public). In Australia the long distance truck driver is typically in control of a 40 to 60 tonne GVM vehicle travelling at 100 kph on an often-narrow single lane highway. Unlike a plane (with autopilot) or train (on a track and with other safeguards like the deadman’s hand) the driver must maintain continuous attention. Even a second or two of inattention can have the vehicle leaving its lane or the road altogether (as any driver who has ever experienced nodding off and survived will know). In the field of occupational health and safety it is well recognised that near misses are a good predictor of future injuries/serious incidents.

The Inquiry received a considerable number of submissions alleging that driver fatigue problems were considerably exacerbated by the lack of consideration they received from

customers. Typical were these comments from the Victorian Road Transport Association (written submission):

Drivers are the end of the food chain as far as the freight customer is concerned. No consideration is given to their welfare upon arrival or prior to departure. All the customer is interested in is getting his or her product from point A to B. No rest facilities or amenities are provided. Drivers are required to be available at a moment's notice in all weather conditions regardless of his or her physical preparedness.

The issue of the contribution of customer/client practices to safety problems in the long haul trucking industry was a central term of reference for this Inquiry and this issue is explored at some length in succeeding sections of the Report.

Sleep Apnea

The Inquiry received a number of submissions that raised the issue of sleep apnea (a spectrum of conditions linked to loss of a normal pattern of breathing during sleep) as a sleep disorder which could constitute a source of fatigue in addition to hours of work and sleep length. One body to raise this issue was the NRMA:

A related problem, which NRMA believes may be a 'hidden' problem, is the extent of the condition of sleep apnea amongst drivers. Recent international research reported at the 6th World Congress on Sleep Apnea has suggested that as many as 4% of men suffer from sleep apnea, with those in middle age and overweight having the highest risk profile. Many long distance drivers would fall into these categories. Recent Australian research with transport drivers (Howard et al, 2000) concluded that a large proportion of a sample of 168 drivers had excessive daytime sleepiness and a high probability of having sleep apnea. NRMA's view is that more research needs to be done to identify the prevalence of this condition among truck drivers, and appropriate measures taken by companies in relation to driver health to assist drivers (written submission NRMA).

In relation to the NRMA's comments it should be noted that the connection between obesity and a sedentary occupation involving long hours of work (with limited opportunities for exercise), often at night, and with meals at odd times (and with a limited dietary selection) needs to be recognised. In other words, there are connections between work, obesity and lifestyle that should not be ignored when labelling any category of workers as susceptible to sleep apnea.

A submission from researchers at the Royal Prince Alfred Hospital/University of Sydney drew attention to a large research project they were undertaking on the extent of obstructive sleep apnea amongst truck drivers and assessing a potential medical remedy (written submission, Grunstein and Desai). The submission pointed to US research, which if extrapolated to Australia, would suggest that sleep apnea is prevalent amongst truck drivers and may be responsible for a significant number of fatigue-related crashes. Attempts to estimate the extent of sleep apnea and its connection to fatigue-related truck crashes are currently based on fragmentary estimates although this evidence is sufficient to warrant further investigation. The research of Grunstein and Desia will hopefully help to fill some gaps in our knowledge of sleep apnea. Over a decade ago the Office of Motor Carriers (1990:5) in the USA argued "individuals with suspected or untreated sleep apnea (symptoms of snoring and hypersomnolence) should be considered medically unqualified to operate a commercial vehicle until the diagnosis has been dispelled or the condition has been treated successfully."

The Report believes further investigation of this potentially serious issue is warranted. At the same time, care needs to be taken to ensure that research into sleep apnea does not become a

substitute for investigating other sources of fatigue amongst truck drivers, most notably the hours and timing of work and rest breaks.

Other health problems association with long hours/fatigue

An increased likelihood of crashing is the most overt but by no means the only health and safety outcome of long hours of work at odd hours and irregular intervals. For example, the combination of long hours and the sedentary nature of their work means that truck drivers are at risk of developing recurrent deep vein thrombosis and pulmonary thromboelolism. These risks have been known for some time (see Office of Motor Carriers, 1990:43) but has not received any where near the recognition or publicity recently accorded to the risk of deep vein thrombosis in airline passengers.

Conclusion

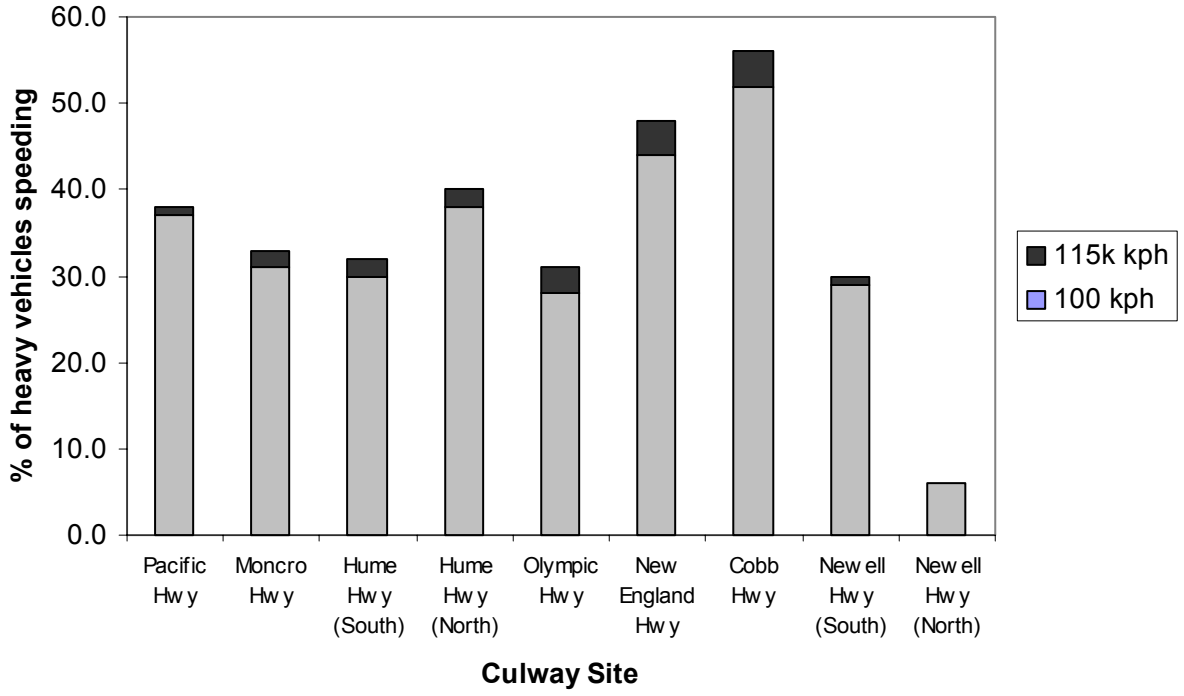
There can be no question that fatigue is a widespread and serious issue in the long distance trucking industry that places drivers and other road users at risk. Even using the most conservative assumptions, available evidence indicates that fatigue related casualties are at a level that the community would find hard to accept and that should not be tolerated. If these figures were publicised they would undoubtedly arouse concern in the community and less conservative but still eminently defendable estimates might well lead to widespread alarm and calls for urgent action by government and other parties. Such concerns would be magnified by the assessment of authoritative bodies like the RTA (which used conservative estimates) that fatigue situation in relation to articulated trucks has been deteriorating over the last six years.

2.2.2 Speeding

There can be no doubt that speeding by long distance trucks poses a severe risk to both drivers and other road users (including pedestrians and bystanders). The connection between speeding and crashes involving heavy vehicles has long been established. For example, a study of heavy vehicle crashes on NSW roads between 1982 and 1988 found 28% were associated with excess speed by the truck involved (Sweatman et al, 1990 cited in Hensher et al, 1990:43). In its submission the RTA stated that data continued to show that speeding heavy vehicles were over-represented in crashes (from 1994 to 1999 the heavy vehicle involvement rate [accidents per 10,000 vehicles] was twice that for passenger cars).

In their written submissions to this Inquiry both the RTA and NSW Police provided evidence to suggest that speeding by heavy vehicles was widespread. This is despite the fact that since 1991 all heavy vehicles with a gross vehicle mass (GVM) of over 12 tonnes are speed-limited to 100kph, and this would cover most long distance trucks. The RTA collects instantaneous speeds at a number of fixed Culway sites (concealed in ground equipment measuring heavy vehicle axle weights and speed) across NSW. The RTA noted that an analysis of speeding trends over the 18 months from July 1998 indicated that speeding by heavy vehicles had increased at almost all sites. Further, as can be seen from Figure 1, Culway data indicates that speeding by heavy vehicles is widespread on virtually every major highway/freight corridor. Speeding trucks constitute at least 30% of heavy vehicle traffic on all but two routes and considerable exceed this figure on the Pacific Highway, Hume Highway (northbound), New England Highway and Cobb Highway.

Figure 1: Heavy vehicles exceeding 100 kph & 115 kph through Culway Sites, July 1998 to December 1999



The NSW Culway results are matched by evidence from other states. Using passive weigh-in-motion technology on the Bruce Highway about 100 kilometers north of Brisbane, Queensland Transport found that of a sample of 60,732 vehicles about one third were detected exceeding the speed limit. Of these 30% of the total sample were travelling between 100 and 110 kilometers per hours, 3% at between 110 and 120 kilometers per hour and 0.3% in excess of 100 kilometers per hour (written submission, Queensland Transport, page 5).

NSW Police painted a similar picture of the speeding problem to the RTA. The Traffic Services Branch of the NSW Police Service pointed to a substantial recent increase in the number of infringement notices issued to heavy vehicles for speeding (from 6,767 in 1998 to 8,644 in 1999). It argued that the perception of police in the field was that the incidence of speeding was becoming more frequent. There were also systematic efforts to evade enforcement measures on the part of some sections of the industry (this will be discussed in more detail in a later section of this Report).

For their part, industry associations accepted that speeding was an ongoing problem. In its written submission (page 19) the ATA stated:

The issue of speeding trucks has long been a curse for the industry as operators willing to flout the speeding laws for commercial advantage have tarnished the industry's safety record and image.

The significance of the speeding issue was attested to from other sources, including mototist reports to the NRMA.

Speeding is one of the main issues which NRMA members identify in regard to trucks, particularly long haul trucks. Members commonly report instances of trucks travelling at speeds well in excess of the posted limit, let alone the special limit for trucks of 100km/h (written submission, NRMA).

The Inquiry also received submissions complaining about speeding by trucks from individual road users and persons living close to highways or roads used by heavy trucks. In one case a northern NSW resident kept detailed records to justify claims that heavy vehicles exceeding the speed limit by 10kph or more through their town was widespread, and this tendency to speed was disproportionately higher in comparison to light trucks and cars passing the stretch under all conditions. The submission alleged that speed-reading indicated that car drivers traveling in company with heavy trucks cars tended to increase their speed to match the trucks (written submission, highway resident NSW). The submission also complained of aggressive behaviour on the part of truck drivers such as tailgating slower vehicles. The writer of the submission consistently raised instances of speeding (where the vehicle had been identified) with relevant transport companies (details of 39 letters of complaint to these companies along with speed data etc were included to substantiate the claims) but complained this yielded evasive or token responses. The writer had also raised their concerns with the police, the RTA and the Minister for Police and had received responses from all three. Other complainants were less assiduous in their record keeping and diligence but the general tenor of their complaints were similar and referred to regions/routes such as the Pacific and Hume highways.

Some care is required in evaluating the understandable concerns of motorists and those living close to major trucking routes. Complaints about aggressive behaviour on the part of truck drivers also need to be balanced against evidence of aggression or just plain insensitivity on the part of other road users that is discussed elsewhere in this Report. At the same time, the claims in relation to speeding are not inconsistent with more systematic and comprehensive data collected by the RTA and the police and add weight to concerns about speeding as a critical safety issue.

2.2.3 Drug Use

Drug use by long distance truck drivers understandably raises deep concern in the community and has been the focus, sometimes unreasonably, of media attention. While stimulant drugs are taken to combat fatigue they:

...do not guarantee driver alertness, and can even cause hallucinations and sudden drowsiness whilst driving. Linklater (1977) found that of drivers using stimulants, 28.8% reported experiencing hallucinations whilst driving within the preceding year (Hensher et al, 1991:63).

The problem was perhaps most graphically illustrated by an incident on 20 October 1989 when a semi-trailer carrying canned fruit from Brisbane to Sydney veered onto the wrong side of the Pacific Highway colliding with a passenger coach and killing both the semi driver and 19 passengers on the bus. The resulting coronial inquest heard evidence that the truck driver had an Ephedrine level in his blood that was 80 times the normal therapeutic dose, indicating he was a chronic user of the stimulant (Coroners Court of NSW, 1990:38). Such chronic usage is associated with (amongst other effects) hallucinations and the driver had suffered from this at least once prior to the incident. Given this, and eyewitness accounts of the crash, the Coroner accepted suggestions that the most likely cause of the incident was that the driver had experienced such an episode and swerved to avoid something that wasn't there. The Coroner recommended that Ephedrine be added to Schedule N of drugs proscribed under the Motor Traffic Regulations – a measure rapidly undertaken by the NSW government.

At the same time, drug use amongst truck drivers should not be seen in isolation from other factors affecting the industry, and the Cowper case well illustrates the point, with a wide-range of safety-related issued being brought to attention of the Coroner. Of these, it is worth noting that the incident occurred early in the morning and for several reasons, including waiting for the load, the truck driver had little rest prior to departure. The driver was employed under a subcontracting arrangement that the Coroner found to be disturbingly loose. While viewed by colleagues as a reliable operator, the Coroner found he had a poor driving record (accumulating a considerable number of infringements and holding driving licenses issued by several states – something that undermined the effectiveness of the penalty point system). It is also perhaps worth mentioning that driver was separated from his wife (see the issue of work/non work balances discussed below).

Since the Cowper smash there have been a number of well-publicised incidents where a truck driver using drugs was involved in collisions killing other road users or bystanders. As in the Cowper case, these incidents often indicate that drug use was not a stand-alone cause but linked into a chain of events.

While drugs may appear to assist drivers in combating fatigue their effects on health, safety and well being extend well beyond those already mentioned. Used to excess or over long periods of time stimulant drugs may lead to a build up of 'fatigue debt', resulting in sudden impairment as the drug effect dissipates. There is also a very real risk of addiction and a steadily increase in dosage to maintain the stimulant effect. Aside from hallucinations, extreme or long-term abuse can lead to aggressive, risky driving behaviour or personality disorders (several incidents in recent years suggest this possibility). Very high dosages may cause sudden and severe brain damage by elevating blood pressure. Further, given the illicit nature of many stimulants, there are issues in connection with reliable dose and quality as well as information about hazardous interactions with other drugs.

The use of drug stimulants by truck drivers to combat fatigue has long been a feature of the long distance trucking industry in Australia (since at least the 1970s). Not all drug-use by truck drivers is work-related. Like other members of the Australian community, some drivers use drugs such as cannabis and alcohol for recreational purposes. Nevertheless, the weight of available evidence indicates that drug use is both common and related to drivers' work tasks, particularly efforts to maintain alertness at the wheel over long hours. Indeed, it appears that these demands may also limit the use of some depressant drugs like alcohol. In its written submission (at page 12), the NSW Roads and Traffic Authority (RTA) noted that alcohol was used by long distance truck drivers but it did not figure prominently in crash statistics. The RTA attributed this to drivers soon learning that alcohol magnified the risk of falling asleep at the wheel although it might be used to offset an excessive dose of stimulants (note the earlier discussion comparing the effects of alcohol and fatigue on driver performance. See Williamson et al, 2000a).

Given the illegality of many stimulant drugs, obtaining accurate information on the extent and nature of the practices has always been difficult. It is therefore impossible to discuss the use of drugs with complete precision. Nevertheless, earlier inquiries and research as well as evidence presented to this Inquiry strongly suggest a consistent pattern whereby drug-use is widespread and associated with the hours of work (both length and timing) and pressure on drivers to meet tight schedules or financial commitments (in the case of owner/drivers).

The connection between long hours, fatigue and drug use has been raised or at least hinted at by a number of previous studies. A study of 615 drivers by Dawn Linklater in 1977 found they worked an average of 71.6 hours per week, 40.7% used stimulant drugs and 28.8% reported hallucinations while driving. Analysing questionnaire responses, Linklater deduced heavy vehicle drivers exceeding 55 hours of driving a week had an increased risk of crash involvement (cited in STAYSAFE 15). In their small pilot study of 46 drivers Hensher and Battellino (1990:549) found that 22% of drivers reported using 'stay awake' pills on every trip while another 35% used pills on some trips. The total of 67% was higher than the Linklater study and also indicated a higher overall reported use of drugs amongst owner/drivers (69%) than employee drivers (51%). This study was notable in suggesting a connection between drug use and speeding. Hensher and Battelino (1990:551) found drivers not using 'stay awake' pills undertook trips at a significantly lower average speed than their counterparts using drugs. As discussed in a later section, they found speed was in turn connected to economic pressures on drivers. In a follow up survey of 820 drivers (Hensher et al, 1991:101) 46% of drivers admitted taking stimulant drugs on at least some trips – a figure just a little higher than that disclosed in Linklater's study undertaken well over a decade earlier. Drug use was highest amongst small fleet drivers (11.5% used drugs on every trip and 48.5% on some trips) and lowest amongst owner/drivers (7.4% every trip and 30.3% sometimes) and large fleet drivers (3.3% every trip and 37.7% sometimes. Hensher et al, 1991:62).

A study conducted by the National Occupational Health and Safety Commission (NOHSC, 1992) found over 75% of the 960 truck drivers surveyed believed tiredness was a serious problem - a view confirmed by the finding that driver fatigue was a factor in at least 20% of road accidents involving articulated vehicles. The report found that, despite legal limits on driving hours of 11-12 per day, an average trucking run covered 1260km in 27 hours and one third of drivers admitted using stimulants in order to meet schedules. Another NOHSC funded study (Arblaster et al, 1996) found that almost half of the drivers interviewed at truck stops reported taking stimulants on most trips. Time-use diaries revealed that few drivers had more than 6 consecutive hours of sleep and many drove on the basis of only 3-4 hours sleep in a 24-hour period. Most recently, a study of truck drivers in Western Australia found 13% used illicit drugs (Hartley, 1999).

A number of parties to this Inquiry submitted evidence relating to the use of drugs, which was generally consistent with previous research and indicated that drug use remains a widespread phenomenon in the long distance trucking industry. A written submission from the Traffic Services Branch of the NSW Police Service stated:

The absolute involvement of drugs within the Heavy Vehicle industry is unknown. However, we know they are there and we know they are used to overcome the symptoms of fatigue. Police are active in the area of detecting drug affected driving by heavy vehicle drivers. Recent operations have seen Police participating with other government agencies specifically targeting the heavy vehicle industry. In one four day period 402 heavy vehicles were stopped. Areas of those trucks were swabbed and then underwent an Ion Scan. 141 or 35% of those vehicles scanned returned positive swabs for amphetamines or other drugs. In another four – day period of similar operations 38% of heavy vehicles swabbed returned positive readings for drugs.

It should be noted that several driver witnesses giving evidence to this Inquiry pointed to a number of measures used to defeat swab tests such as rubbing the steering wheel with WD 40 and other chemicals. The Inquiry was unable to determine the extent and actual effectiveness of such practices but to the extent they are effective then swab tests may understate the use of drugs. More importantly perhaps, reference to these practices provides just one example of numerous devices used to evade regulators in the area of drugs and other safety issues that the Inquiry was informed of.

During the course of its own investigation a number of witnesses to the Inquiry indicated that the use of drugs was by no means uncommon, although to label every driver as a likely drug-user would be a gross exaggeration. One driver estimated that slimming pills, speed and "shakers" were used by about one third of truck drivers, which is remarkably consistent with available survey evidence.

Witnesses and written submissions from drivers and their wives made repeated references to the work pressures that caused drivers to use drugs.

The combination of long hours and drugs can have implications not only for on-road safety but also has long-term health effects on drivers as well as impacts on their families. Drivers and their wives are not unaware of these effects. This is well illustrated by the comments of the wife of one owner/driver:

Drivers resort to taking drugs out of necessity; it is not for recreational purposes. Many drivers spend large amounts of money on drugs so they can make the miles needed to earn enough money to support their families. What should be considered is that the drivers taking drugs know that they are risking their own health and well being in doing so. Amphetamines, ephedrine, shaker, whatever they may be taking, all have short and long term effects on their health. All drugs, which are central nervous stream [sic], have the ability to cause problems with raised blood pressure and increased heart rate. They can cause renal problems, heart and lung damage, there is the possibility of stroke if there is a brain aneurysm and indirectly there can be harm done to the liver and kidneys. Of course there are also problems that arise through sleep deprivation. Ask any wife that has been the recipient of a dressing down over the phone by their husband just because he is so damn tired that he has to vent his anger and frustration at the only person that will understand how he is feeling. Drivers do not glorify in the use of drugs; in fact most are usually ashamed of it. They try to keep it to themselves for fear that their children may find out and get the wrong impression – the impression that taking drugs is ok. But what are their choices? Well there really isn't any (written submission, wife of owner/driver southern New South Wales (written submission, wife of owner/driver, southern NSW)

Another witness pointed to scheduling pressure:

You take drugs, not because drivers want to take them but because they're forced to take them or they will get the sack for being late (oral submission, female driver, NSW**)**

In his evidence to the Inquiry, Dr Michael Belzer from the University of Michigan made essentially the same point, stating that drivers in the US used drugs to stay awake because they felt under pressure to get loads to their destinations in time or face the sack.

Drugs are, according to witnesses, comparatively easy to obtain. One driver, for example, claimed that he could obtain any drug we cared to mention within two hours of leaving the venue of the Inquiry hearing in a regional city.

Since the commencement of the inquiry police have carried out several raids on truck stops dealing in amphetamines and other drugs, including a major drug supply point at Peak Hill

where a number of arrests were made. These raids confirm that oral evidence given to the inquiry was not just hearsay.

The allegation by witnesses that some road houses, including some on the New England Highway, were being used as drug supply points was echoed in several written submissions and appears not to be confined to New South Wales. The author of one submission from Western Australia stated:

I have worked at a roadhouse where I saw drugs being stored in the staff quarters (written submission, Western Australia)

Most disturbing of all were allegations that some transport companies supplied drugs to their driver. A number of drivers told the Inquiry that some small companies handed out sachets of speed or other drugs in pay envelopes. Other parties, including an experienced accident investigator, also claimed that some companies were supplying drugs. The Report is inclined to accept allegations about the supplying of drugs to drivers by transport companies presented to this Inquiry as there is recent evidence in another jurisdiction to confirm this practice occurs. On 3 August 1996 a semi-trailer (the prime mover being federally registered) belonging to WRB Transport Pty Ltd that had been travelling erratically for some time collided with two cars near Blanchetown, South Australia resulting in the death of six people. The semi driver, who survived the smash, was later found to have drug residues (Phentermine - a derivative of amphetamine, Ephedrine and Tetrahydrocannabinol - found in Cannabis). The Coroner found that a number of company personnel (named in the inquest) had knowingly supplied drugs to the driver and this was a common practice in response to the 'ludicrous hours many of the drivers spent at the wheel' (Coroners Court of South Australia, 1999:32). During the Inquest the Coroner undertook the time-consuming and almost certainly unusual step of interviewing many of the drivers for WRB enabling him to corroborate the existence of the practice (and despite an unsuccessful appeal by the company to have the Supreme Court rule the evidence inadmissible).

While accepting that some transport companies supply drugs to drivers the number of times this allegation was made would seem to indicate that it is a practice involving only a small minority of companies (worrying enough). In its submission the NSW branch of the TWU provided evidence that at least one company openly counsels its drivers on the 'safe' way to use drugs. The union supplied a set of hints to ‘safe drug use’ published in the company’s staff newsletter/journal. Again, there is nothing to indicate this is a common practice although the company concerned had a reputation of being at the more respectable end of the spectrum rather than an acknowledge rogue operator. The Inquiry heard submissions from some companies that adopted very strong stance on drug use by drivers but this was by no means typical, reflecting the degree of tacit acceptance of drugs in the industry.

The Inquiry heard evidence from long-term drivers about how the types of drugs had changed over time since the 1970s. A report by Hensher et al (1991) found that the use of amphetamines by long distance truck drivers exceeded that of the general population and this use was associated with the working conditions of drivers. Their survey of 820 drivers confirmed the widely held belief that long distance truck drivers used stimulant drugs to stay alert on long trips (Hensher, 1991:62).

It is comparatively easy to sensationalise the issue of drug-use in the long distance trucking industry. The image of a ‘spaced out’ or ‘bug-eyed’ driver barrelling down the highway in a vehicle with a GVM of anywhere between 40 and 60 tonnes is certain to alarm the community, especially in the context of the Cowper incident in 1989. It is therefore not surprising that periodic reports of drug use in the industry receive prominent coverage in the print and electronic media. Understandably, such media images cause immense distress to

responsible drivers and transport companies that avoid drugs. At the same time, drug-use is a major problem and the only way to effectively address this issue is to alter this situation.

Summarising the above, a number of points can be made. First, though evidence is fragmentary, all available information indicates that drug-use has been common in the long distance trucking industry over many years and this remains the case. Second, the use of drugs has a number of effects on health and safety, not simply the commonly recognised problem of 'spaced-out' drivers hallucinating and smashing into another vehicle. These effects include evidence suggesting a connection between drug use and speeding as well as long-term health problems for drivers (premature aging etc)

The weight of evidence presented to this Inquiry is that drug-use by long distance drivers widespread such practices are tolerated or at least not actively discouraged by companies to the extent that might be expected. This situation, which exposes both drivers and other road users to an avoidable risk, must be addressed.

2.2.4 Occupational Violence, Road Rage and Sharing the Road

Over the past five years there has been a growing recognition of the significance of occupational violence, a phenomenon that can range from verbal use or non-verbal forms of intimidation through to threats of and actual physical assault (including murder). Unfortunately, as yet there have been few attempts to collect systematic data on the extent of this problem. The survey of 300 drivers conducted as part of the Inquiry (see Appendix 3) tried to address this gap by asking drivers a specific set of questions in relation to occupational violence that had been successfully used for an earlier series of surveys of other groups of workers. The survey results indicated that around 45% of long distance truck drivers reported experiencing some type of occupational violence, with the figures for owner/drivers being somewhat higher and those of large fleet employee drivers being somewhat lower. Verbal abuse was by far the most common form of occupational violence with comparatively few drivers being either threatened or even more rarely physically assaulted.

At the same time, a range of intimidatory behaviour specific to those using the roads, namely road rage, was a common experience of long distance truck drivers. Around 20% of truck drivers reported experiencing road rage incidents, a figure that varied little between owner/drivers, small and large fleet drivers. Since drivers mostly experience road rage at the hands of other road users while in the course of earning their living, it must be viewed as work-related violence. While many of these incidents were at the lower end of the spectrum (the hurling of abuse, beeping of horns and aggressive gestures) road rage also entails more dangerous behaviour such as sharp manoeuvres by angry car drivers and, in two cases, threats with a gun. Given the tighter controls on gun ownership in Australia the latter would be rightly view as far more exceptional and dire than similar action might be seen in the USA. Nevertheless, the general level of road rage against truck drivers is significant if somewhat unexpected. Even dismissing a common but misleading stereotype of truck drivers as typically aggressive/combative (an image epitomised and popularised in the 1970s film *Duel*), it may still seem surprising that those in charge of a vehicle often weighing 40-60 tonnes GVM are victims of aggression from car or other vehicle drivers. However, the level of road rage amongst road users generally appears to be rising, and the combination of congested traffic and a failure of motorists to appreciate the turning etc characteristics of a large articulated vehicle (as raised elsewhere in this Report) make the scenario less surprising. Further, the evidence speaks for itself. Road rage is a widespread problem for long distance truck drivers. Given the pressures drivers are already under from long hours at the wheel etc, even emotional upset and distraction of relatively minor instances of road rage may prove unduly disruptive to driver wellbeing if not their immediate safety.

Three distinct types of violence were identified, namely verbal abuse and road violence from other motorists; abuse and threats from staff at freight forwarding or loading yards; and abuse by customers when deliveries were delayed or more expensive than expected. The sruvey found severity appeared amongst these different types, with road violence most likely to lead to physical assault and abuse from customers least likely to entail physical assault. Overall, about two thirds (67.1%) of incidents could be classed as road violence; 16.1% emanated from staff or bosses at freight forwarding yards or depots; and 9.8% from customers. A further 5.6% were interpreted by the drivers as RTA/police harassment of some kind, and 1.4% of incidents could not be clearly allocated to one or other category.

Table 18: (Table 18 in Appendix 3)
Occupational violence experiences of 300 interviewed drivers

	owner/drivers (n=99)	*Small fleet drivers* (n=104)	*Large fleet drivers* (n=85)	*Other* (n=12)
no	45.4%	54.8%	57.6%	66.7%
verbally abused	36.4%	35.6%	25.9%	25%
threatened	10.1%	6.7%	5.9%	8.3%
assaulted	1%	-	1.2%	-
road rage	21.2%	19.2%	21.2%	33.3%
total number	54	47	36	4
% with violent experiences	54.5%	45.2%	42.3%	33.3%

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

Qualitative and quantitative data derived from the Survey indicated that there were distinctly different causes for these three types of occupational violence. First, road violence most frequently occurred in heavy traffic situations near roundabouts or red lights, or on highways when heavily laden vehicles drove slowly up hills. An important contributing factor is the lack of general motorist understanding of truck stopping limitations, and space requirements for turning at roundabouts. This issue is examined later in the Report. Another factor is that road violence perpetrators typically have similar socio-demographic features to other violent individuals: male, young, lower socio-economic group, aggressive, sometimes abusing licit and illicit substances etc. Second, with regard to abuse and threats at freight-forwarding yards only one variable stood out namely that: violence and economic pressures (loading delays, undercutting on quotations, cutting-in on queues, covert incentives provided by some drivers to queue-jump, and mistakes by forklift drivers fueled tensions) were closely linked in nearly all incidents. and sometimes resulted in lower-level occupational violence. Third, with regard to customers economic and time pressures were again an issue, with many customers relying on a Just-in-Time approach that narrowed the window of delivery time and was conducive to tension where any delays occurred.

Overall, the Survey revealed that occupational violence is a significant but poorly recognised) OHS problem for heavy vehicle drivers. Owner/drivers and drivers in small fleets experienced more violence (especially verbal abuse) than did large fleet drivers. **Road violence had been experienced by around 20% of all drivers in the past 12-month period, with car drivers the most common perpetrators. Three drivers had missiles thrown at them and two drivers had been shot at in the immediately previous 12-month period.**

The issue of road rage was not a significant issue in either written submissions or evidence given to hearings of this Inquiry, although the not unrelated issue of the failure other road users to understand truck handling, braking and turning characteristics did receive significant attention. Likely reasons why violence/road rage didn't figure in submission include the fact

that the issue was not explicitly mentioned in the terms of reference and there is less public awareness of it as an OHS problem. Further, the issue was not directly raised with those making submissions, partly because survey evidence on the phenomenon only became available when these processes were already well under way (and hence no questions were asked about the issue during hearings). So not too much should be read into the fact that the issue received limited attention from those volunteering information to the Inquiry.

As already implied, the issue of occupational violence and more especially road rage can be seen as an extreme case of the general relationship between truck drivers and other road users. While the Inquiry received several complaints about the aggressive behaviour of truck drivers it also received complaints from truck drivers and operators about motorists failing to understand truck signage, the handling/turning and braking characteristics of heavy vehicles, or how to overtake long vehicles on the open highway. Specific mention was made of the fact that some car drivers expected trucks to have similar performance characteristics and appear to have received no indication of the significant differences as part of their driver education. The Inquiry received a detailed written and oral submission from a B-Double tanker driver, Rod Hannifey, on his involvement in a number of activities aimed at improving mutual understanding between truck drivers and other road users. These activities included a caravan survey/caravan CB, National Sharing the Road with Heavy Vehicles Program, Truckies Top Ten Tips, School Survey (Dubbo) and a 'Truckmate' school activity. The National Sharing the Road with Heavy Vehicles Program has the support of the Australian Trucking Association (ATA) and in the past year has been promoted in the print media and on radio in regional NSW and Queensland. Truckies Top Ten Tips is also promoted on radio (one issue per month) and specifically targeted at tourists travelling on highways, regional roads etc. Hannifey also pointed to the value of school visits in terms of educating young people about the road environment they would encounter as future drivers. The Inquiry was impressed by the time and commitment Mr Hannifey had devoted to this issue (with the full support of his employer) and the very positive results to a number of initiatives, such as the school survey.

It is worth noting that this issue has also received attention in the United States. Under the Intermodal Surface Transport Efficiency Act, 1991 (section 4002 (g) (6)) provided an allocation of funding to educate the motoring public on how to share the road safely with commercial motor vehicles. Since this time a Share the Road/No-Zone Campaign has pursued a broad based strategy, working in conjunction with regulatory agencies, to increase public recognition of truck and bus limitations and so influence their driving behaviour.

Together with other evidence, the Inquiry formed the view that inadequate understanding of heavy vehicles amongst other road users is an issue that needs to be addressed both because it exacerbates safety risks to other road users and places additional unnecessary pressure of truck drivers. It should be noted that a number of measures are already in place (and have RTA involvement), including the establishment of a ‘Sharing the Roads’ taskforce to identify conflict between different types of road user (not just trucks but pedestrians and cyclists. Faukes and Irwin, 1999).

Nonetheless, there appears to be a strong case for expanding existing programs in relation to heavy vehicles. There is also a strong case for including a small but vital component on heavy vehicle characteristics (signage, braking, turning etc) in the formal training of car and other vehicle drivers (and as part of license testing).

2.2.5 Driver Training Schemes and Driver Quality

The issue of adequate training does not only apply to other road-users but also truck drivers themselves. At present in NSW drivers can obtain a license to drive an articulated vehicle either by taking a test run by the RTA or undertaking a competency-based training program with an accredited trainer. The Inquiry received submissions from drivers, current and ex-

trainers, ex RTA officers, industry associations and range of other parties that were critical of either or both of the existing systems.

On the one hand, the examination-based system was criticised as too narrow and failing to sufficiently differentiate between different classes of vehicles. It should be noted that the heavy vehicle driver's licensing handbook (see RTA, 1999) includes information on different vehicle configurations (and where they are permitted to operate), correct loading and braking procedures, coupling/uncoupling, maximum vehicle dimensions and correct loads (including position and anchors), loading/unloading, drugs, fatigue, record keeping, and a host of other matters. The criticism seemed to focus on issues like the amount of training received from experienced operators in terms of correct restraint. On the other hand, the competency-based system was praised for addressing issues like load restraint but some criticism was registered about the selection/experience of some trainers. For example, it was suggested that some trainers lacked sufficient knowledge of the industry to perform their task effectively (oral submission, competency-based trainer southern NSW).

At the same time, a number of submissions to this Inquiry argued that a new more stringent and comprehensive scheme was needed to improve driver standards and professionalism. In its written submission, the Victorian Road Transport Association, for example, saw a need for both enhanced operator and driver licensing/accreditation. It pointed to (oral submission) problems in relation to limited training given to B-Double drivers (in terms of load restraint, coupling and negotiating narrow bridges) based on presumptions they would be involved in a very restricted set of routes and tasks - presumptions that no longer hold. The Association also cited an inquest by the state coroner into a truck-driver fatality where the coroner observed that a driver's license was not a certificate of competency, and in this case the driver should have undertaken more advanced training.

A not unrelated concern expressed by a number of bodies was that the truck driver workforce was aging and it was difficult to attract sufficient quality young applicants because of the occupation's low skill image. There was a fear that there was a looming shortage of drivers that would affect the ability of the industry to meet the expected substantial increase in the road freight task. In response to this the NSW Road Transport Association has held discussion with the Transport and Distribution ITAB with a view to addressing this problem by establishing transport industry traineeships, involving TAFE level training (written submission and Attachment 'A'). The aim of the scheme would to secure an adequate supply of trainee drivers (and related occupations such as forklift drivers) and to enhance the professional recognition and quality of the profession. A number of existing drivers, including owner/drivers, saw advantages in TAFE or equivalent base training not only as an entry point into the industry but also to upgrade the skills of existing drivers. The Inquiry was impressed with the professionalism of many drivers who made submissions and the stress they placed on the need to gain experience and to keep learning through the course of their driving career. It was also struck by US evidence pertaining to the problems that can arise when the industry becomes the domain of recent immigrants with little training. Of course the standing of drivers is not unconnected to the wages earned and while this will be examined in more detail later it is enough to observe that low earnings may play a large part in future shortages of fully professional, qualified and experienced drivers. At the present time it should be stated that, in the view of the Inquiry, moves to upgrade the training of drivers have considerable merit, especially if this includes areas such as occupational health and safety, relevant regulatory requirements (road transport, OHS and industrial relations) and communication and business skills.

The move towards a National Driver Licensing Scheme for multi-combination class vehicles might have be seen as a logical conduit for this, especially as it has entailed a project for identifying the requisite competency standards and a suitable training package based on those competencies (see Austroads, 2000). Under the new scheme, individual jurisdictions will still

have to tailor courses to meet jurisdiction-specific requirements in relation to private training providers, competency-based training and the like. Unfortunately, examining a recent paper on proposed competencies (Austroads, 2000) this Inquiry could find little or no mention of OHS or a number of the other areas just mentioned. Rather the competencies largely dealt with the technical skills required to drive a truck and road transport regulations. The Inquiry believes this training base is too narrow for a driver operating in a commercial industry such as long haul road freight.

Debates over driver quality/training are by no means confined to Australia. In 1997 a report commissioned by the Federal Highway Administration (FHWA) in the USA concluded only 31% of entry-level truck drivers got adequate training (Johnson, 1997). To address this the Administration proposed mandatory HFWA-registered training, tougher commercial driver's license tests and further initiatives on driver training. However, trucking companies opposed these moves, preferring '…to regulate themselves' (Johnson, 1997:66).

The Inquiry finds that current driver training methods should be evaluated with a view to identifying deficiencies and to also to provide a basis for progressive enhancement of driver competencies. Driving a truck should be regarded as a life long learning experience, with periodic re-testing and upgrading of skills.

2.2.6 Work/non-Work Imbalances

The extraordinarily long hours worked by long haul truck drivers, and the consequent long periods of separation from their families, makes it difficult for them to balance work/non-work responsibilities. The resulting problems have been pointed to in earlier research. For example, a study of South Australian drivers (Arblaster et al, 1995:71-79) found that the pattern of long periods of absence/short periods of presence was disruptive to family life. This included tiredness/irritability at home, alienation from children and attempts to redress this with gifts or lenient discipline that interfered with the authority of partner primarily responsible for caring for the children. About half of the partners of the drivers interviewed commented on a high divorce rate in the industry and a number of ex-drivers gave this as a reason for leaving the industry.

The Inquiry received considerable evidence on the emotional strain and family pressures associated with long hours that were consistent with those just referred to. This evidence came from drivers, the wives of drivers, members of the Concerned Families of Australian Truckies (CFAT), police officers and others including a priest. The latter observed:

The families are the recipients of all the issues, many of them brought up here today. So the church I think has been the presence, being available…I think is terribly, terribly important. We see breakdowns - breakdowns of marriages, the whole issue of tragedies on the road and the associated issues with that, the deaths, the grief and bereavement. Truck drivers and their families need to know…that priests are available… As you move around mixing with people, meeting with people, particularly in the trucking industry, it is very apparent to me that…I've seen acute pressure, families are broken up for long periods of time…(oral submission, Catholic priest, Northern NSW).

A survey of 300 long distance drivers undertaken by the TWU revealed that 66% believed work was putting pressure on their family life and personal relationships, with 79% spending two nights or less at home per week (only 6% spent five or more nights at home). In terms of hours spent with their family, 63% of drivers reported spending 20 hours or less at home with their family each week and 32% said they spent 10 hours or less. Over 90% of drivers reported feeling tired or sleepy while driving in the past 6 months and 62% said they had been involved in accidents or near misses due to fatigue in the last six months. Around two thirds (66%) of drivers believed their hours of work had increased over the past five years, 62%

believed the hours they worked were dangerous to their personal health and safety and 80% stated that work schedules required them to work illegally by spending excessive hours behind the wheel. Over half the drivers (59%) indicated that they didn't think they could continue as a professional driver under the present conditions until retirement (oral and written submission, TWU NSW Branch). While such findings need to be treated with caution, the general thrust of the results is consistent with findings of independent surveys and other evidence presented to the Inquiry. It should be noted that even the time spent at home may entail limited interaction since, as the Inquiry was repeatedly told, drivers arrive home emotionally and physically exhausted.

Evidence was given in relation to pressures placed on drivers and a lack of empathy, understanding or accommodation even in extreme situations of personal distress. Judy Penton from Concerned Families of Australian Truckies described an incident where a driver was told to complete his journey and refused leave to comfort his wife/make funeral arrangements after learning his newborn child has just died of sudden infant death syndrome. The wife of an owner/driver who worked in a truck stop roadhouse in southern NSW described a similar incident.

I remember he was a regular. He came in obviously distressed so I took my coffee break and sat with him and watched him cry into his steak in front of a dining room full of men. I sort of pushed him until he sort of opened up. He was crying because he hadn't been home in three and half weeks and he had a little boy who was quite ill and he wanted to get home. He rang his boss and said "look I just want to get home for the weekend to see the wife and the kid" and his boss said "you are going to Brisbane."...[the driver pleaded] *"Cut me a bit of slack, home for the weekend - just so I can see the kid"* [manager's response] *"You go where I tell you or you can go home and stay home." Now this guy didn't have a choice because he had a mortgage to pay, he had financial commitments so the only* [way] *he could do that was earning a wage. So he just had to drug himself up to the eyeballs to do what his boss told him to or he'll be sacked. Who takes responsibility for that?* (oral submission, wife of owner/driver, southern NSW).

These incidents, which are clearly an abuse of the employment relationship and would deeply affront most members of the Australian community, may represent the worst type of case but submissions to the Inquiry demonstrated that insensitivity to driver's home and family life was not atypical but common in the industry. The Inquiry received many comments to this effect from drivers, owner/drivers, the wives/partners of owner/drivers, the TWU and CFAT representatives. Not all companies behave in this way. The Inquiry received evidence of companies that go to some lengths to avoid making excessive demands on their drivers (examples of this are cited later in the Report). However, submissions and other evidence indicates that intense competition and pressure from customers, as well as enforcement regime that focuses on drivers and leaves managers and others largely exempt from legal responsibility for their actions, discourages operators from treating their drivers with dignity or compassion.

The evidence indicates that the pressures presently imposed by the industry on many drivers of long distance trucks is having a damaging effect on their personal lives and causing severe strains to family life. The long hours of work, the lengthy periods away from home on the road, the physical strain involved in carrying out the job means that a driver is put into a situation where it is very difficult for them to maintain a normal balanced family life. Not only are drivers away from home for long periods of time but, when they do come home, they are often in such a state of exhaustion that all they can do is sleep much of the time until the next job. In this circumstance, it is almost impossible for a driver to make any meaningful contribution to child-minding/rearing responsibilities to assist their partner, and the situation is especially difficult when - as appears often to be the case - both partners are working.

Since many of the problems just described are a consequence of the long hours of work, and especially the long periods spent away from home, it is difficult to see how these issues can be addressed without altering arrangements that are accepted as standard practice throughout the industry. In May 2000 the NSW Anti Discrimination Amendment (Carers Responsibilities) Act was introduced to enable workers to better juggle work and family commitments by prohibiting direct or indirect discrimination in employment on the basis of an employee's caring responsibilities. Under the Act the employers have two defences, namely that the person cannot perform the inherent requirements of the job or that complying with the request would impose an unjustifiable hardship on the employer (Burke, 2000). While long hours and lengthy absences would seem hard to avoid in the long haul road transport industry it is by no means clear that the present extreme situation could not be ameliorated (some larger companies already do this). The lodging of a complaint under this legislation may appear unlikely. However, it is worth noting that two recent English cases over long working hours that relied on similar legislation both involved transport workers (*Edwards v London Underground* and *Cowley v South African Airways* cited in Burke 2000) indicating that such a claim is by no means unfeasible and could make for a very interesting debate. Rather than waiting for such a case, there is a need for the industry, the union and others to look for solutions. It can be argued that standard employment practices in long distance trucking make it one of the most family-unfriendly of all industries and the impacts on driver wellbeing could well be having negative consequences for safety performance (both directly and indirectly via driver recruitment/selection).

2.2.7 Overloading, Load Restraint, Vehicle Design/Maintenance and Poor Road Conditions as Safety Issues

2.2.7.1 *Overloading and Load Restraint*

Like speeding and excessive hours, overloading of vehicles has been an issue in the long distance trucking industry over many years. Overloaded trucks are more susceptible to both single and multiple vehicle crashes (due to tipping, loss of control or diminished breaking performance) and do considerably more damage to roads on which they travel than properly loaded trucks. Further, damage to the chasis and suspension systems as a result of overloading can lead in turn to vibration problems that affect driver comfort and health (both directly and indirectly by exacerbating fatigue).

The Inquiry also received a written submission on risks associated with the use of flexible tanks (bladders) used extensively in the eastern states to transport liquid products such as molasses due to poor filling practices, excessive age/poor maintenance, damage from a stone/abrasive object and inadequate restraint. Citing several incidents, the submission called for the introduction of a national code governing the maintenance, use and regular testing of such tanks. The issue was not raised in oral submissions to hearings but may warrant further investigation.

2.2.7.2 *Vehicle Design, Mass and Configuration*

Safety concerns have been raised in connection with B-Doubles virtually since they were introduced. The Coroner conducting the inquest into the 1989 Cowper tragedy (see above) pointed to road-user concern at overtaking such lengthy vehicles. He urged that there be no further expansion in B-Double road activity until highways like the Pacific were widened to minimise these risks (Coroners Court of NSW, 1990:22). A Report by the Staysafe Committee (*Staysafe 16*, 1990) raised serious concerns about 12 of the 23 routes where B-Doubles had been approved and recommended tighter controls on the approval process and routes where B Doubles were permitted. Despite this, there was a strong push for B-Doubles on economic grounds (given that they could carry 40-50% more freight than a normal semi-trailer configuration) and a case was made that their use would also bring safety benefits. The

Cairney (1991:23) Report on improving trucking safety argued that the greater load capacity of B-Doubles meant that the number of trucks needed to complete a set freight task could be reduced by a third and Canadian experience suggested the safety record of B-Doubles was no worse than that of semi-trailers.

In the ensuing years there have been a series of further evaluations of B-Doubles (and specification changes to them) looking at road impacts, safety and a range of related issues. For example, in November 1994 Ian Manion and James Hurnall prepared paper on road and bridge wear and swept-path performance for an Australian Local Government Association Seminar. The following year the 25m B-Double Monitoring Group set up by the NRTC prepared a paper dealing with a wide range of issues, including road impacts; industry considerations, including productivity; and road safety. In 1998 Blanksby, Sweatman and McFarlane produced a report on the trial of 25m B-Doubles for the South Australian Road Transport Association. In 1999 L Bruzsa and J Hurnall prepared a report 'Technical Comparisons of 25 m and 23 M B-Doubles' for the Queensland Department of Transport: Brisbane. This year the NRTC has released a report on the length of B-Doubles.

The argument that using larger trucks would have safety benefits by reducing the overall number of trucks was suggested a number of times during the Inquiry. It was usually put forward by industry representatives and usually in responses to questions about the safety of B-Doubles or whether the move to bigger trucks was driven by economics rather than a concern for safety. The same argument has been mounted in other countries. However, it is not an argument that won favour with a recent New Zealand inquiry into truck crashes (Storey, 1996). Pointing to the use of this argument in conjunction with industry pressure to permit larger more cost efficient rigs the report observed:

In the United States supporters of larger trucks claimed that fewer trucks would be needed in the transportation of goods because they were longer and wider. Advocates also believed that the increased use of twin-trailer trucks (truck tractors pulling two trailer units) would have little overall effect on highway safety because the reduced number of trucks would offset the small possible increase in crashes. Experience has shown that the predicted reduction in truck movements has not occurred. Increasing the size of trucks has apparently reduced the expense of distribution with the consequence of more business using this mode of transporting goods. The result has been a steady increase in the number of larger trucks to the point where large trucks now account for over 50% of vehicle traffic on some highways. Research indicates [cites Garber and Black, 1995] a likely increase in large truck crashes, particularly on two-lane secondary roads as motorists move from congested interstate and primary roads on to the secondary road system.

During the inquiry we heard public concern about the possibility of larger trucks on the roads. There was considerable apprehension about their safety, noise, speed and fears of increased intimidation (cited in Storey 1996:56).

It should be observed that debate over introducing 60 tonne GVM trucks in New Zealand at this time was already resolved in Australia.

The Inquiry was unable to undertake a detailed consideration of the impact of the introduction of larger truck configurations such as B-Doubles (and to a lesser extent B-Triples and road trains) on overall vehicle numbers in Australia. However, the impression gained from submissions to the Inquiry was in keeping with the New Zealand report's comments on US experience, namely that the effect if any has been marginal with the economic gains largely being used to secure more road freight business. The Inquiry was repeatedly told that the economies of B-Doubles were passed on to the consumer in terms of a discounted freight rate. The Inquiry also heard that this in turn, placed pressure on owner/drivers, most of whom continued to rely on the conventional semi-trailer (it was suggested that freight tasks

undertaken by most owner/drivers did not the justify the additional cost of a B-Double). At the same time, some owner/drivers complained of competition from B-Doubles. It should also be noted that the size/configuration and GVM of both semi-trailers and B-Doubles was increased at several points during the 1990s. As would be apparent to any long-term road user, even a conventional semi-trailer has increased significantly in size and weight over the past 20 years. These changes have been overwhelmingly driven by commercial considerations.

There is solid evidence to show that, not surprisingly, occupants of cars and light trucks colliding with heavy vehicles are far more likely to suffer serious injury or death than the truck driver than would be the case had they collided with a car or light truck (Young, 1990). What is not so clear is whether the increasing size of trucks significantly exacerbates the rate of serious injury or death in collisions. Certainly, the Inquiry received a number of submissions from motorists and others expressing concerns about the size, and more especially, the length of articulated trucks, on roads they believed were barely suitable at best for their operation. For example, the written submission of an ACT-based motorist stated:

In my observation, overtaking a very long articulated truck travelling at 105km on a dry open road takes nerve and concentration for an experienced driver. It would be very testing for a probationary, or learner driver. This situation is made worse if it is raining and doubly worse if it is raining after dark. Because they are elevated well above the road drivers are not affected by the spray in the same way as car drivers, so they maintain a constant (high) speed. A car driver attempting to overtake a truck in these conditions faces a curtain of spray from the truck's wheels, a very long way to travel in the dark down the tunnel between the truck and its trailer and the road edge, the effect of the car's headlights reflecting off the spray and the metal truck sides, further distracting light effects from the "Christmas trees" that many trucks carry and the full, or partial, glare from the headlights of oncoming trucks. It is always a frightening experience.

The Report is unaware of any detailed research on this issue in Australia although it might have been presumed that such a consideration would have formed an essential component of deliberations to introduce larger vehicle configurations as part of the national road transport reform agenda. As noted already, vehicle configuration is not simply a technical issue but has significant commercial ramifications. The Report will have more to say on this issue in the section dealing with national coordination of safety in the long distance trucking industry.

At this point, it is important to note that the issue of the safety of longer or heavier trucks was raised in a number of submissions to the Inquiry. As noted elsewhere, the submission of the NSW Police Force expressed concerns about turning/overtaking issues in relation to long trucks like B-Doubles. Operational police echoed this concern. For example, a commander for southern NSW witnessed the B-Triple trial on the Hume Highway and strongly objected to it being granted access to the single lane section for use (the trial was reported in the RTA's heavy vehicle owner and driver newsletter, *PrimEmoves,* August 2000:1-2). He also expressed general concern about the lack of understanding amongst car drivers of overtaking longer trucks (such as B-Doubles) on single carriageways (including the remaining section of this on the Hume Highway) and referred to a recent fatal incident to illustrate this (oral submission, police commander, southern NSW).

Recent US research (Apparies et al 1998) has found that those driving longer and more demanding truck configurations had a higher measurable heart rate which could have implications for driver fatigue, and their health and safety more generally. Unfortunately, the comparisons were between single trailers and triple trailers (both A and C dolly) and so cannot be readily translated to the Australian context. A critical review of the research evidence on safety considerations associated truck size and weight by Robert Clarke (1998) from the US Department of Transportation (DOT) noted the importance of making

comparisons under equivalent exposure conditions. This includes adjusting for the proportion of time spent on different road types (rural roads, main highways etc) by particular vehicle configurations, such as the greater tendency of multi-trailer combinations to use interstate highways relative to rural roads than single trailer combinations. When these adjustments were made they made a substantial difference to results. For example, what originally appeared to be a lower fatal crash rate for multi-trailer combinations than single trailer combinations was transformed into a higher crash rate when compared on the same rural roads. Under conditions of unrestricted usage Clarke (1998:43) found multi-trailer combinations could be expected to experience an 11% higher overall fatal crash rate. Clarke (1998:44) identifies a number of serious difficulties in assessing the impact of larger and heavier vehicles on safety which existing regulatory assessment and approval processes are failing to address. Arguing the pressure to achieve productivity gains must be balanced against a wide array of public concerns including safety, Clarke (1998:45) advocates a cautionary approach and the need to develop a new set of standards and conditions (rigorously enforced).

Without ignoring differences in truck configuration between Australia and the USA, these US findings suggest the health and safety implications of longer/larger and heavier trucks and particular trailer configurations require more serious consideration, unless it can be shown the Australian research has taken all the above-mentioned factors into account. The Inquiry was unable to assess this matter fully but believes it warrants further investigation.

It would probably be matter of some concern to the community at large if they were aware of the limited knowledge of the safety performance associated with the dimensions and mass characteristics of different truck configurations travelling on Australian roads and highways. The Performance Based Standards Project initiated under Austroads and National Road Transport Commission (NRTC) funding in 1999 has begun a process of defining performance measures and initial standards (see Prem et al 2001), and identifying the dimension and mass characterisation of the Australian heavy vehicle fleet (Ramsay et al 2001). In recognition of limitations of using a specified reference set of 84 vehicles based on Weigh-In-Motion data the latter report (Ramsay et al 2001) is seen more as a discussion paper. Further, it represents a welcome but only a preliminary step towards a better understanding of the safety implications and appropriate performance standards for different heavy vehicle configurations. Overall, there seems to be a disturbing lag between the approval of different truck configurations and knowledge of their safety performance although in fairness to the NRTC it might be suggested it is addressing a problem not entirely of its own making.

In addition to the debate over B-Doubles and long trucks more generally, the Inquiry received a series of very detailed submissions on heavy vehicle vibration and fatigue from Dr Arnold McLean, a senior lecturer in engineering at the University of Wollongong. In submissions (which included photos of tyres and engine mounts and videos) derived from both testing vehicles and working with around 40 drivers, Dr McLean identified a number of problems with existing truck configurations he believed exacerbated fatigue and other risks to safety (eg handling problems and cracking of axles). According to Dr McLean, design flaws/maintenance problems exacerbating fatigue included higher exhaust system cabin thermal load (due to the fact trucks were originally designed as left hand drive), tyre scalloping, over-size fuel tanks, excessive load on front suspension pins and bushes, and inadequate driver seats. Other design/specification problems identified included vehicle tendency to wander, veer or dart (especially on high camber roads) and inadequacies with slow-response airbag suspension systems (as well as long-term irreversible vibration problems following overloading-related damage). Dr McLean cited evidence that the physiological demands on drivers required frequent rest breaks. He also raised a question as to whether the bulk of prime movers designed for major highways (like the dual carriage-ways) but often used on minor highways and country roads here might cause premature

damage to the truck (as well extensive as road damage), vibration and driver fatigue. In support of these claims, Dr McLean provided both photographic and physical evidence of worn parts that indicated premature wear/vibration in his written and oral submissions. One remedy to the health/serviceability issue, suggested by Dr McLean, was to introduce a 120-day identification period for suitability/serviceability into financing arrangement for truck purchases (present clauses require the operator to sign off on this before it enters service).

A key point of Dr McLean's submission was the reconfiguration of articulated trucks over the past decade, notably the increase in size/load capacity and more powerful engines to optimise economic efficiency, were achieved partly by compromising the distribution of loads on the prime mover. A key parameter here was to increase freight load capacity (including wheel-base length on the prime mover) without exceeding load limits on the steer wheels. Extensive involvement with drivers had convinced him that drivers had had to adapt their driving practices such as braking to accommodate some of the consequences of these changes. Implicit here is the suggestion that, notwithstanding widely acknowledged improvements in the comfort and capacity of heavy vehicles over the past 20 years, the effort to introduce more efficient configurations may also have entailed some trade-offs in terms of driver comfort/fatigue and safety. Indeed, Dr McLean explicitly confirmed that this was his view. Essentially similar views were expressed by a number of others making submissions to the Inquiry including an experienced insurance/accident investigator (oral submission).

Dr McLean’s argument about financial considerations affecting vehicle configuration in ways that had adverse health and safety affects on drivers was also echoed by a number of drivers when referring to prime mover wheelbase and use of and particular suspension systems. One driver argued that air-bag cabin suspension rather than solid rubber mounts should be a minimum condition, especially on short wheelbase prime movers. He alleged that in many cases trucks were purchased without this in order to make a small cost saving and because those making the purchase did not have to drive the vehicle or consider its impact on the driver (written submission, B-Double driver, mid west NSW). A Victorian driver of almost 30 years experience (oral submission) claimed that use of short wheel-base primer movers on B-Doubles, a measure designed to maximise the load capacity, compromised safety because it could lead to situations where the trailer steered the prime-mover not vice versa. He also alleged the trucks became hard to handle or 'skittish'. He called for a shift to the US system where length measurements were based on the freight-carrying component of the truck/trailer not on the overall length of the vehicle (as is currently the situation in Australia). Problems with short wheelbase prime movers were raised on a number of occasions. Another argument raised that new longer trailers able to accommodate 24 pallets and since four of these were behind the wheels of the trailer the fear was expressed these would cantilever weight of the drive wheels of the truck, especially on rough roads.

A not-unrelated issued was a claim by a Victorian driver (oral submission) that B-Double regulation did not prohibit trucks running with the second or B trailer loader and the first or A trailer (that is the trailer directly behind the prime mover) unloaded. He argued this practice, banned with regard to other multi-trailer combinations like road trains, affected steering, led to 'hopping' and was generally unsafe. Another driver, who had owned a B-Double claimed they were responsible for road damage, especially corrugations on rises cause hopping, due to strain placed on the drive wheels dragging two trailers.

Issues about truck/trailer configuration (and specific model/makes in relation to this) and safety were raised by a number of drivers and small fleet operators making oral submissions to the Inquiry. The issue was raised by substantial number of drivers and some small fleet operators (often those who continued to drive themselves) and evoked a depth of feeling (that the issue had more resonance in some areas may say something about differences in terrain). For example, it was the primary point made by one small fleet operator who travelled all the way from Taree to attend the hearing at Grafton (making complains about several

make/models of truck, including one identified by Dr McLean). He complained about the distribution of weight in the new trucks, especially with regard to the prime mover. Another driver referred a different make/model (again mentioned by Dr McLean) where, despite having only done limited kilometres, there had been air-bag suspension and steering problems:

This truck's wandering about, the suspension's gone…When you go into a certain corner the truck gets this unsteady feeling. (oral submission, owner/driver of logging truck, northern NSW).

In response to a series of similar complaints, the Federal Office of Road Safety (FORS) commissioned an investigation into ride vibration and truck handling/steering by a consultant (Roaduser International Pty Ltd) which commenced in November 1998 and recently issued its final report (see Sweatman and McFarlane, 2000). The investigation involved advertising for complaints and the detailed testing of a number of trucks. With regard to vibration the final report noted the small number of complaints received (13). However, given their own findings of high seat vibration on a number of vehicles and the significance of driver fatigue in heavy vehicle safety, the authors stated that research was needed on the connection between vibration and fatigue. A more recent report on heavy vehicle seat vibration and fatigue prepared by Mabbott et al (2001) for the Australian Transport Safety Bureau found there was only limited evidence on a connection between fatigue and low frequency vibration typical of heavy vehicles and pointed to the need for further research. However, the report also noted that there was sufficient evidence that exposure to vibration amongst drivers could lead to back injury and other health problems (Mabbott, 2001:19). Given evidence indicating high level and prolonged vibration exposure amongst Australian heavy vehicle drivers the report urged further research, drawing on ISO 2631-1997 (it was noted that the Australian Standard for whole body vibration is not cited in state OHS regulations), to develop appropriate standards for trucks sold in Australia.

With regard to vehicle handling, the Sweatman and McFarlane report found no evidence that the characteristics investigated affected handling, although some problems were found with, for example, one vehicle generating significant unwanted steering effects under certain conditions (Sweatman and McFarlane, 2000:vi). Overall, the report identified some types of vehicle/suspension arrangements requiring immediate attention. At the same time, given the complex issues identified, the report also urged a collaborative approach on the part of government, manufacturers, industry and operators to research and other measures designed to address vehicle specification and driver health and safety in the long term. In this regard, it is worth noting that in the USA the federal government has recently established a partnership with nine truck and diesel engine manufacturers to improve the safety of all trucks (Quinlan, 2000:33).

Dr McLean prepared a detailed response to the Sweatman and McFarlane Report he made available to this Inquiry (McLean, 2000). In this response Dr McLean noted that the report had only tested a relatively small number of vehicles, had not tested a several complainant vehicles fitted with Neway suspensions, driver vibration dose was not assessed in accordance with ISO 2631. In addition, Dr McLean argued that two vehicles (F1 and F6) experienced major safety deficiency incidents but were not reported in Table 6 as having darted and another vehicle (F3) was modified with quick acting Hadley air bag bogie suspension. Dr McLean identified other issues requiring further investigation that are too numerous to list here and beyond the expertise of the Inquiry in terms of evaluating them. In the view of this Inquiry Dr McLean is a credible and knowledgable witness, who has made a contribution to the activities of STAYSAFE.

Dr McLean was not the only technical expert to echo concerns of the drivers of problem vehicles or to express concerns with the Roaduser International Report. The Inquiry received

a paper from an engineer, Mr John Lambert (see Lambert 2001), who had been involved in the FORS investigation while an employee of Roaduser International in 1999. Mr Lambert expressed a number of criticisms of the Roaduser report that were similar to Dr McLean (such as the limited number of vehicles tested). He estimated that problems of vehicle wander, dart and excessive vibration affected between five and fifteen percent of vehicles capable of towing 42.5 tonnes or more. Mr Lambert also identified a number of reasons for why some of these problems had not been reported in Europe and the USA including the problematic conversion of vehicles from right to left hand-drive, very different axle mass and dimension/mass limits and the fact that interstate highways in these countries were generally rigid pavement of a high construction standard.

The issues about truck configuration, suspension and thermal exhaust raised by Dr McLean and others are serious and require further investigation. It can be noted that the recent federal inquiry into managing fatigue in transport House of Representatives Standing Committee on Communications, Transport and Arts, 2000:88) made a similar recommendation in relation carbon dioxide and carbon monoxide levels in truck cabins

Community groups, motorists and others also raised the issue of truck configuration, although their primary concern was simply the size of trucks and the risks they posed to other road users. A number of motorists and individuals suggested that the increase in truck size showed a maximum of concern for industry economics and a minimal concern for safety. For instance, one motorist wrote:

In conclusion, the economics of truck operation have led to ever larger commercial vehicles being put on our roads. As a taxpayer I deeply resent this because I believe that is poor transport planning and that rail should be taking more of the loads that presently travel by road.

Nor are these complaints confined to Australia. For example, in a Canadian community organisation, Canadians for Responsible and Safer Highways (CRASH) has repeated claimed that government policies on truck size, permissible routes for larger vehicles, driving hours and the like were essentially dictated by the interests of the industry (CRASH *News release* July 1998).

Finally, it should be noted that there are almost certainly hidden safety effects in the shift to larger mass trucks where a commercial dimension is unambiguous. Most notably, it is not simply a question of overall truck numbers but also impacts in terms of the distribution of freight across different modes of land transport. As noted earlier, rail freight clearly and substantially outperforms road transport in terms of safety and this means any shift of freight movements away from rail to road transport is almost certain to result in a net diminution in overall safety performance (including the improvements that might otherwise have occurred). By altering the costs of road freight changes to the load carrying capacity of trucks can affect the competitiveness of road freight in relation to its major rival rail freight. In 1997 as part of a Mass Limits Review the NRTC commissioned a report by the Melbourne Institute of Applied Economic and Social Research of the effects of increased mass limits for heavy vehicles on road and rail demand. The NRTC had calculated that implementation of this review would lead to around a 2% reduction in road freight rates and a 1.54% increase in road freight demand. The report (NRTC, 1997) found the most likely impact (more extreme outcomes were considered less probable) on rail freight demand would be between 3.6 and 4.4% on the Sydney/Melbourne corridor, between 1.5 and 1.8% on the Brisbane/Sydney corridor and 0.27 to 0.33% on the Adelaide/Perth corridor. At the same time, the report found this would lead to a reduction, not an increase, in the number of trucks. Yet, even if this were the case the shift would still arguably have effects on overall transport safety performance given the superiority of the rail sector in this regard.

Further, other bodies have come to different conclusions about the effect of increased mass limits/larger vehicle configurations on truck numbers. Two years earlier a paper by the Bureau of Transport and Communication Economics (1995:17) argued the cost efficiency of B-Doubles would cause a modal shift to road from rail and this would counteract the reduction in vehicle numbers produced by higher payloads.

As far as the Inquiry is aware no retrospective analysis has been undertaken to verify the effects of changes in vehicle mass on the respective share of road and rail, though the freight task share of the latter is certainly falling. Nor is the Inquiry aware of an attempt to estimate the implications of these shifts in terms of overall transport safety performance. The Inquiry finds it hard to understand why such calculations were not an explicit and critical part of assessing standard changes liable to affect the balance between road and rail freight. There are further safety implications to the competition between road and rail freight that will be raised later in the Report.

2.2.7.3 *Poor road conditions/use of trucks on inadequate roads*

A number of submissions argued that poor road conditions had adverse effects on both equipment and driver health.

NSW would have to have some of the worst highways in Australia. The Hay Plains between Waddy and Narrandera call this the highway to HELL. Another is the Newell Highway near Moree we call that part the Moree Rough. When you have to drive over this type of roads day in and day out it takes its toll on the driver and his equipment (written submission of South Australian based owner-driver).

Another submission from a mid-western NSW based driver argued that there was inadequate recognition that road and surface conditions, pavement failures, road design (including camber, bumps/dips and bridge aprons) and signage (or their location) affect trucks differently to cars. He stated that this point became apparent to road engineers and other RTA staff who had travelled in his truck (a B-Double) and it was imperative for all engineers and relevant staff to be get similar experience and to begin to address these issues. It was also argued that road characteristics, especially bumps and dips that resulted in the driver being thrown continuously against the seatbelt sash (as well as a lack of roll-over protection) was a factor making drivers resistant to wearing seatbelts as now required by law. The Victorian Road Transport Association (written submission), too, argued road engineers had no appreciation of the problems of controlling large vehicles on rough and undulating roads.

Improved road conditions, including the construction of dual carriageway, have long been seen as a way to improve safety. For example, converting the Pacific Highway into dual carriageway was the major recommendation of the coronial inquest into the 20 deaths arising from the infamous Cowper smash in October 1989 and the death of 35 others in a coach smash at Clybucca two months later (Coroners Court of NSW, 1990:53-58).

In addition to submissions from organisations representing motorists or concerned with road safety generally, the Inquiry received several submissions in relation to the dangers posed by trucks to local residents. These submissions often implicitly or explicitly raised the suitability of road conditions in terms of design capacity/congestion as well as load restraint, speeding and other matters. One such submission was received by CHIPSTOP – an anti logging group based in Bega – which alleged that the large number of trucks travelling to the Daishowa woodchip mill near Eden caused considerable road damage and posed a threat to public safety. In relation to safety, the submission argued that the trucks carrying loads of 25-30 tonnes (and more on newer vehicles) passed through small towns on roads often unsuited to large vehicles and pointed to several incidents where logs were shed from moving trucks (written submission, CHIPSTOP). The submission called for an assessment of road damage,

the placing of tighter limits on truck speeds and loads, and increased surveillance/compliance measures in relation to these vehicles. The issue of adequate load restraint and the capacity to enforce current requirements was raised by a number of other parties, including the NSW Police Service, and is discussed in more detail in a later section of this Report.

2.2.8 Parking Bays/Rest Areas and Road Houses

There can be little doubt that the ability of drivers to take adequate rest breaks on road can and does affect safety. The issue of inadequate parking bays was raised in a number of oral and written submissions to the Inquiry. While several acknowledged that there had been an improvement in this area in recent years it was suggested there was need for further upgrading. The need to ensure rest and recuperation areas were strategically located was also raised. Several submissions indicated that rest areas compared unfavourably with those found on Victorian highways but while this may be the case it appears the problem is not confined to NSW. Indeed, the Victorian Road Transport Association (written submission) pointed to poorly defined and designed rest areas and call for more adequate and strategically located parking bays along major routes.

During the course of its investigation the Inquiry visited/observed a number of parking bays, noting several excellent arrangements as well as others clearly in need of further upgrading.

One interstate trucking company suggested that the RTA should develop an action plan covering all major routes in conjunction with the road transport industry (that had already undertaken considerable research in this area). Another Sydney-based company commended the role the ATA had played in upgrading facilities in NSW and elsewhere. While the RTA already has a upgrading plan in place there seems grounds for further improvements, using input from both industry and driver representatives. The recent federal inquiry in managing fatigue in transport (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:76) also identified this issue as demanding attention, and recommended the federal Minister for Transport and Regional Services should fund a national audit of roadside rest areas.

Several submissions also raised the issue of roadhouse conditions which discourage drivers stopping and do not make adequate provisions for drivers to shower or rest:

Roadhouses I've visited and worked at are dirty and anti truckie…The cooperation of roadhouse needs to be sort (sic) as well as fuel companies who own roadhouses to improve cleanliness and facilities for truck drivers (written submission, former roadhouse worker, Western Australia).

In one roadhouse we visited in Grafton a small room next to the cafeteria was set aside with four beds which would enable drivers to sleep outside their cab.

2.2.9 Subcontracting/Employment Status, Labour Hire/Leasing and Safety

Subcontracting, or the subletting of work usually to smaller firms and owner/drivers, has always been a widespread practice in the road transport industry although there is a prevailing view that these arrangements have become if anything more pervasive in recent years (there is no accurate data to confirm this). Knowledgeable observers of the industry identify one reason underpinning this growth as an attempt by larger firms to maintain market share or contracts in a climate of intense competition/low freight rates by using subcontractors as a lower cost option to employing their own drivers. Leaving this issue aside, there is substantial Australian and international evidence that subcontracting often leads to a significant deterioration in safety across a range of industries (Quinlan et al, 2001:335-414). Evidence indicates the primary reasons for this are underbidding/overwork/corner-cutting on safety by

subcontractors; the creation of more disorganised work settings and fractured management structures; and by undermining conventional regulatory regimes. The Inquiry received submissions indicating subcontracting was associated with serious safety problems in the long haul road transport industry. For example, the move to greater subcontracting has been a cause for a number of trucking insurers because of the relatively poorer claims performance record of owner/drivers and its impact on the claim record of larger companies moving to replace employee drivers with subcontractors.

As already indicated, financial pressures on subcontractors can pose serious risks to safety. Later sections of this Report will consider the impact of low freight rates and indebtedness on the safety performance of small firms and owner/drivers in some detail. At this point, it is also worth noting that financial pressures on owner/drivers are often exacerbated by delayed payment from principal contractors. The Inquiry received numerous submissions from owner/drivers complaining of lengthy delays in payment as well as a somewhat smaller number of complaints about unreliable or dispute payment. In one typical case submitted to the Inquiry an owner/driver signed an agreement with a Brisbane-based company that specified the payment period as two weeks. Despite this, the driver was later told that payment would be made five weeks from receipt of paperwork and a further seven weeks from the receipt of full invoices relating to fuel used – a total delay of 12 weeks (written submission, CFAT, page 8). At the time of the submission the owner/driver was owed almost $5,000 and was in severe financial difficulty. During the course of investigation the Inquiry received other submissions claiming far high amounts were owed. The Driver Survey undertaken for the Inquiry (Appendix 3, Table 24 page 65) confirmed this as a serious issue for owner/drivers. Over 20% of owner/drivers surveyed nominating slow/nil payment as one of three biggest issues they faced (over 35% nominated freight rates/GST and over 17% nominated low pay). In sum, both the survey and other evidence presented to the Inquiry makes it clear that delayed payments to owner/drivers are a serious issue. These practices are no unknown in relation to subcontractors in other industries like building. However, it is arguable that the potential consequences for safety in the road transport industry can be especially serious, as in a case where a subcontractor tries to take on extra work to 'make up' for a delayed payment and, in so doing, exceeds their driving hours.

In sum, all the evidence available to the Inquiry indicates that delayed and unreliable payments to subcontractors are a serious safety issue. As will be shown later in this Report, many owner/drivers are operating at the very margins of financial existence and such additional burdens (not counting the associated stress) are hardly conducive to stability in the industry or safe operations.

Unlike other areas of road transport casual employment and labour leasing are not, as yet, prominent features of the long distance trucking although the latter appears to be growing off an admittedly small base. One driver alleged that at a Western NSW depot where he worked casuals failed to obtain shifts unless they were prepared to work long hours beyond the legal limit (written submission, former NSW based driver). Few witnesses to the Inquiry raised labour hire as an issue. However, there were some exceptions.

One experienced driver who had worked for a labour hire firm for over 5 years pointed to a number of safety problems related to labour leasing. He alleged the practice of leasing drivers was conducive to situations where drivers were unfamiliar with the vehicles they were being asked to drive and the routes they were required to take. He also argued leased drivers were in a weak bargaining position when it came to raising concerns about defective vehicles, overloading and the like (verbal submission, truck driver, Newcastle).

The NSW branch of the TWU also raised concerns in relation to labour hire. It argued (oral submission) that one consequence of the increasing use of leased labour was to circumvent state transport award clauses setting a minimum ratio of permanent to casual staff as well as

requirements to establish a workplace OHS committee under the NSW Occupational Health and Safety Act. While the union conceded there was as yet limited use of leased labour in the long haul sector of the transport industry it was concerned that this practice would grow, as it has elsewhere.

Given recent experience in other industries where labour hire has become widespread these concerns are, in the view of this Report, well founded and any significant move to labour leasing should be viewed with concern. One factor that may limit labour leasing in the long haul sector is the potential damage that could be done to expensive equipment by drivers because they are unfamiliar with it, the routes taken or because their short-term employment does not encourage a 'protective' attitude to the equipment. The Victorian branch of the TWU (oral submission) referred to operators who eschewed further use of leased labour on precisely these grounds. Since subcontracting is integrally linked to commercial practices within the transport industry it will be examined further in subsequent sections of this Report.

2.2.10 Safety implications of road and rail modes of long distance freight movement

The Inquiry received a number of written and verbal submissions from organisations in rail freight industry. Further, individuals and community road safety groups also presented arguments for a shift in land transport away from roads and in favour of rail. For example, in its written submission the Highway Safety Action Group of New South Wales Inc argued:

The HSAG has consistently lobbied to have our railway infrastructure upgraded so more freight can be put on trains, thereby removing trucks from our state roads and improving safety conditions. We regard this as integral to discussions on the long haul trucking industry and recommend its inclusion in this inquiry (HSAG, 2000).

Similarly, an experienced driver with tertiary qualifications in industry economics argued that active government policies to encourage rail and water-based transport over road transport for long-haul tasks would not only reduce cartage costs in the longer term but also cut the number of vehicle accidents, emissions of exhaust gases and oil consumption. He argued it would also reduce road maintenance expenditure:

…as it is well-known that the most road damage is caused by the heaviest trucks (written submission, ex driver, Victoria). He called for additional expenditure upgrading the rail network and the imposition of a ‘road abuse’ tax to discourage the use of heavy vehicles on already congested routes such as the Hume Highway.

The Inquiry terms of reference did not specifically ask for a consideration of the relative merits of road and rail freight transport. However, some matters arising from the issues raised in these submissions were relevant to the Inquiry terms, namely:

- To what extent have competitive advantages in road transport been achieved via hidden subsidies to this mode (a competitive neutrality argument) or an undercutting of safety standards (an externalities argument)?
- Does road transport gain a competitive advantage due to the nature of its regulatory regime and the level of compliance activities (an argument integral to consideration of types of regulation and enforcement)? A related issue is the possibility of lessons that can be learned from examining methods for regulating safety in the rail freight sector.

In relation to the first issue, the following points can be made. When the Inter-State Commission (1986) investigated cost recovery arrangements for interstate land transport it found that there were substantial hidden subsidies to the railways and close to full cost recovery for articulated trucks. However, over the past 15 years there have been quite

profound changes to rail freight (including corporatisation in NSW and privatization in some states and the removal of captive markets) at the same time as rail infrastructure expenditure has in no way matched expenditure on roads. An assessment by the Productivity Commission (2000:91) identified substantial productivity improvements by rail freight operators (though still 30% below the technical efficiency of the best performing countries studied) and an 18% reduction in freight rates between 1990 and 1997. The same report noted that rail had been placed at a serious disadvantaged due to inadequate capital expenditure to upgrade the rail network.

While rail freight operators have become more cost efficient it can be argued government favouring of the road system in terms of funding represents an important disadvantage. Independent research lends some weight to the claims that current government policies do not achieve competitive neutrality in relation to road and rail transport, with the former acquiring an increasing share of the land freight task. Road transport has also gained from improved technology and the licensing of larger and more efficient truck configurations while limits to tracks restrict the capacity of rail to move in similar directions. A study (Laird, 1996) of the efficiency of road and rail freight along the eastern seaboard (Melbourne to Cairns) found that a $6 billion upgrading of highways since 1974 had provided major benefits to the road freight industry while, by comparison, federal government expenditure on rail track upgrade was minuscule. Laird argued over 40% of the mainline interstate track in NSW failed to meet fast freight train standards and that improving 'such track and moving to full cost recovery from heavy trucks would save over 200 million litres of diesel by 2015' (Laird, 1996:1). Laird (1996:23) also argued that the NRTC charging regime for articulated vehicles was unrealistic and, unlike the New Zealand system, did not amount to anything like complete cost recovery on the part of trucks. In its submission to the Productivity Commission (2000) report on rail reform, the NRTC conceded its charging structure under-charged heavier vehicles.

Laird argued road transport also gained by being able to operate in a more deregulated environment where the important externalities of death and injury related to articulated trucks, and its considerably worse performance in this regard compared to rail, were not considered part of the competition equation. In their written submissions, rail freight organisations FreightCorp and the Australasian Railways Association claimed trucks have far higher greenhouse emissions per gross tonne kilometre than rail and heavy trucks were responsible for a highly disproportionate share of highway damage.

In 1996 a study of by the Bureau of Transport and Communication Economics (1996) argued an expenditure of $3.4 billion upgrade of the rail network over the next 14 years would tansfer up to 40% of inter-capital road freight to rail. This, in turn, would yield net social benefits due to reduced transit times and lower rail operating costs (mainly from lower maintenance) that would offset the capital costs, although the Bureau felt aggressive responses might make a 40% shift to achieve in practice. In the context of an significantly expanding overall freight task (Butcher, 1990:11) it is not essential that a growth in the rail freight share should lead to a reduction, let alone a serious reduction, in road transport share – especially given the adaptability and competitiveness of the latter. Providing greater encouragement for rail transport may have a number of hidden advantages. A recent report noted that the growing interest of some road transport operators in inter-modal operations was due in no small part to the increased competitiveness of rail freight (Department of Communications, Information Technology and the Arts, 1999).

Turning to the second dot point dealing with the competitive advantage gained according to different regulatory regimes, a number of points can be made. Most notably, rail freight is subject to a much more stringent (and therefore operator costly) regulatory regime than road transport including mandatory operator licensing, more stringent driving hour limits/fatigue management, and regular testing of train drivers. Given the significant disparity in safety performance between the two modes, this Inquiry will have far more to say about this issue in

a later section. However, several observations can be made here. In its report on the progress of rail reform (conceived of in terms of microeconomic reform) the Productivity Commission (2000) did address the issue of safety regulation but its overwhelming focus was on inconsistent safety regulation and the challenges that current forms of operator licensing posed to new entrants. Greater coordination has clear advantages so long as it does not entail a lowest common denominator approach to safety standards (and issue addressed later in this Report). Reducing barriers to entry via operator licensing requirements that are designed to maintain minimum safety performance levels is more contentious issue, as evidence presented later in this Report will amply attest.

A key recommendation of the Productivity Commission was the need to establish a consistent national framework and the National Road Transport Commission was proposed as model for this. What the Productivity Commission failed to do was to consider the comparative safety performance of road and rail transport, including the assessing effectiveness of the NRTC in improving safety outcomes, as part of its assessment of rail safety regulation. In the subsequent chapter (10) dealing with, amongst things government policy affecting competitive neutrality between rail and road transport the issue of safety regulation is raised in the is designated under the policy area of access, regulations and operating procedures. However, in the subsequent discussion the Inquiry could find no examination (and certainly no detailed or serious examination) of the issue of the relative stringency/costs (especially when compliance levels are taken into account) or outcomes of the road and rail safety regimes. Safety is also conspicuous by its absence from the next chapter on the social dimensions of reform. The Inquiry was very disturbed that an examination of reform in the rail sector, with detailed assessments of competitive neutrality, could ignore a significant disparity in safety regulation/outcomes between road and rail transport. As this Inquiry has already indicated the extent of this disparity is substantial even if measured only in economic terms (ignoring the human and social consequences) and the basis for making such estimates was available.

The importance of ensuring that the road freight industry is not advantaged over rail freight operators by having to meet inferior safety standards, and at least as importantly the equalisation should entail levelling up not reducing standards, has been addressed in a recent inquiry into Tranz Rail in New Zealand. In advocating the extension of OHS legislation to Tranz Rail the inquiry (New Zealand, 2000:47) stated:

...we see considerable force in a submission by Tranz Rail that, in a situation where it competes directly against road transport operators, it should be competitively disadvantaged by having greater responsibilities placed upon it than its road transport competitors. The Government may therefore wish to consider whether the protective provisions of the HSE Act should be applied with equal strictness to truck operators (We note that this was indeed a recommendation of the 1996 report of the Transport Select Committee on its inquiry into truck crashes).

It is, indeed, a pity the Productivity Commission did not demonstrate a similar level of awareness that there is more involved here than regulatory costs and that genuine competitive neutrality should not entail placing workers and the community at greater risk. Compounding its errors, the Productivity Commission report advocates further outsourcing in the rail sector without considering the adverse safety consequences of this in terms of injury rates, hazard exposures and reduced OHS knowledge - effects now well established by international research. A review of published scientific research on the OHS effects of outsourcing, covering a range of countries and industries, found outsourcing was associated with deterioration in OHS in 23 of the 29 studies reviewed (the remaining six studies were deemed indeterminate due to the absence of a control group, benchmark or baseline). Indeed, a negative effect was found in all the studies where an effect was measurable and no study found outsourcing had a neutral let alone positive effect (Quinlan et al, 2001:335-414).

Considering all these issues the Inquiry was surprised to discover that although there is a national body coordinating regulation in the road transport industry (the NRTC) there was no equivalent body dealing with rail or a more general body coordinating policy on land transport more generally (as in New Zealand). Whether the NRTC model of combining safety with economic reform is the most appropriate model (as suggested by the Productivity Commission) is a moot point. In a later section the Inquiry will examine the role played by the NRTC in some detail, as part of its consideration of regulatory coordination.

In sum, the long haul road freight industry has received significant commercial advantages over rail in terms of the relative expenditure on upgrading highways when compared to that expended on the rail network. Other factors that might have advantaged rail in the past, notably captive markets and issues of cost recovery (when compared to road freight) no longer apply (quite the reverse). Safety outcomes have not figured at all the consideration of competitive neutrality and it can be argued the community is currently bearing the costs of this imbalance. Barring a major in improvement in the safety performance of road transport, these imbalances will have long term implications for the overall level of safety performance in the transport sector into the foreseeable future.

2.2.11 The transportation of hazardous substances/dangerous goods

The transportation of dangerous goods has been seen to be a major issue in the long distance trucking industry, as in road transport more generally. This is hardly surprising since collisions or spillages involving hazardous materials could have disastrous effects. During the 1980s and early 1990s particular concern was raised about this issue both in New South Wales and elsewhere. For example, in 1992 a three-day road blitz conducted in Victoria identified a large number of trucks transporting hazardous chemicals across Melbourne had breached key safety laws (such as the Dangerous Goods Act, 1985). The safety breaches identified included unroadworthy vehicles, carrying chemicals without a license, poor safety equipment and unsecured loads (Perrone, 2000:71).

In the course of this Inquiry relatively few references were made to this issue by either witnesses or in written submissions (with the obvious exception of the Environmental Protection Authority). One possible reason for this may be the greater deterrent effect and more targeted enforcement of environment protection legislation (see the section on enforcement).

2.2.12 Other safety issues

A number of other safety issues were raised in the course of the inquiry.

2.2.12.1 *Passenger Coaches*

In the course of the Inquiry a number of submissions were received in connection to interstate/tour coaches and two coach drivers were also interviewed as part of the driver survey because they were keen to participate (one was also a truck driver and to have refused them would have caused undue offence). The Inquiry did not see it as part of its brief to consider safety issues in relation to long distance passenger coaches. However, it is appropriate to note that these submissions and interviews raised a number of concerns that very much parallel the trucking inquiry, including the use of improperly maintained vehicles (in terms of brakes and tyres but also including claims some buses were unregistered and uninsured when driven). As with truck drivers, the suggestion was made that drivers were reluctant to raise complaints or refuse to drive such vehicles because they feared this might jeopardize future work prospects. Other issues raised that were not a prominent feature of the

investigation into trucking were the use of casual drivers and 're-engineering' employment arrangements through the transfer of contracts and corporate ownership. In its submission, the Queensland Branch of the TWU, also detailed complaints it had received from coach drivers, including converting them to owner/drivers and excessive hours imposed on them by companies (with several drivers claiming they had worked between 23 and 25 hours straight). This report can make no comment on these allegations (and based as they were on very fragmentary sources) other than to suggest they may warrant further investigation by the appropriate regulatory agencies.

2. 3 CONCLUSION

This section of the report has examined evidence on the extent of safety and related health problems in the long distance trucking industry. Various measures of safety performance were examined including:

- crashes, including those causing fatalities
- the incidence of both acute and chronic injuries
- road rage/violence against drivers
- drug abuse
- speeding
- abuse of driving hours (fatigue) and log book falsification
- work/non work conflicts and family breakdowns
- the level of driver distress (GHQ) and suicide
- insurance claims, uninsured vehicles (comprehensive) and unregistered vehicles
- overloading, vehicle configuration and inadequate vehicle maintenance
- workers compensation data and omissions from this

Taken as whole, these measures paint a picture which gives cause for genuine concern not only about the current state of affairs but also likely future trends.

SECTION 3

COMMERCIAL PRACTICES, CLIENT AND CONSIGNOR PRESSURE AND SAFETY

What I've noticed over the last 11 years is a decline in the safety standards in the trucking industry and there are a number of areas that have brought about that. One is that the return to the drivers is diminished over a number of years and it's become more competitive and there's been more pressure put on drivers to meet deadlines… I see more of it because I go to see the drivers, the drivers' widows and they produce documents and receipts and hours [records]. I go out to the accident scene and I look at defective trucks and I wonder how people have been put into defective trucks. A driver was sent from here to Brisbane with leaking exhaust in the cabin and when he got to Brisbane he said "can we have the truck fixed" the owner said to them "no, its too expensive, put your head out the window". And on the way back they've rolled the truck…that chap's… a quadriplegic. I've done deaths and the standard of truck maintenance has fallen off, mainly because the owner/drivers can't afford to maintain the trucks, they're not getting the return from the industry that allows them to maintain a safe standard… I see the defective welds on trucks, I see the trucks with the bald tyres, trucks with the joints that are worn, steering… They'll [drivers] pull their logbooks out and they'll show us their invoicing and they're not making money out of it…and then I go back to the employers or the people who consign the freight and I talk to them. And their attitude is "so what, there's another truck driver out there". They're a commodity, they're expendable. You can lose one, bad luck, you can get another one… They [customers] don't care. All they see is that their freight has to be from Sydney to Melbourne, has to be there at 6 o'clock Friday… I know for a fact if you go to the wholesale market here in Victoria the stuff that's coming down and arriving there is not arriving legally. If you went out and checked the hours of those drivers coming from Cairns, Bundaberg, Brisbane – they're not arriving there legally. (oral submission, professional insurance and accident investigator for past 11 years, covering NSW, Victoria and South Australia)

A central term of reference for the Inquiry was to investigate the connection between the web of commercial arrangements (and parties to this) that determine the movement of goods by road and safety. In particular, the Inquiry was asked to investigate the impact of clients' and consignors' requirements on the drivers including:

- Industry tendering practices;
- Transport contacts between road transport companies and major clients;
- Methods of pricing;
- Lack of client responsibility for driving hours, driver performance and remuneration for drivers;
- Client/consignor requirements as to delivery times.

Investigation of these issues indicated that the impact of client and consignor requirements must be examined in the context of a broader set of commercial practices within the industry and the structure of the industry itself, especially the large number of small operators and widespread subcontracting of freight tasks. Account also needs to be taken of the role of government competition policies.

3.1 Earlier evidence/reports linking commercial/industrial practices to safety

3.1.1 Earlier Inquiries and Other Evidence Pertaining to the Australian Trucking Industry

When this Inquiry examined earlier reports and inquiries into the long distance trucking industry it was rather surprised by the substantial amount of evidence linking commercial

practices and safety performance. The association between commercial/industrial practices and safety in the long distance trucking industry had been repeatedly identified in reports and inquiries over many years. In addition to factors such as driver fatigue/the concentration required to drive large trucks over long periods, poor road conditions, inadequately maintained trucks and 'cowboy' drivers; reference has been made to a range of commercial/industrial practices and competitive pressures. These include intense competition for loads leading to depressed freight rates, tight schedules imposed by freight forwarders (themselves under pressure from load owners or consignees) and reward systems (notably per kilometre rates and delivery time bonus/penalties) that encourage overwork and speeding. This Report felt it necessary to summarise findings of earlier inquiries and reports to show that the evidence collected in the course of the current Inquiry in large part confirms what should have been known, indeed has been known, but which has not been acted upon in the past.

As noted by Hensher and Battellino (1990) over a decade ago these commercial/industrial issues had been repeatedly raised over many years, including in the 1984 Report of the National Road Freight Industry Inquiry. The National Road Freight Inquiry had been established to investigate industry efficiency (including competition from rail freight) and practices, truck financing practices and the involvement of heavy vehicles in road crashes. This broad brief enabled the Inquiry to investigate the link between commercial practices and safety. The final report was very clear about the bargaining power that consigners and shippers could exert over freight forwarders and transport operators in relation to freight rates. Just a few quotes illustrate this point.

Large consignors, through their ability to obtain competitive quotes, are able to lower the rates they pay by exercising their considerable bargaining power over forwarders (May et al, 1984:30).

Large shippers may negotiate discounted (or contract) rates well below the schedule rate, especially when the individual forwarder is faced with actual or potential competition for the business in question (May et al 1984:32).

It should be noted that when this report was written the residual effects of a number of earlier regulatory controls and impediments to competition within the industry (including some that the Trade Practices Act introduced a decade earlier had yet to effect) were still being felt.

Looking specifically at the relationship between commercial practices and safety the Inquiry Report noted that not only was flouting of speed, weight limits and other regulations widespread but this was hardly surprising given the commercial advantages to do so. It noted that an instance of overloading of one tonne per trip might yield $1500 in additional revenue at the risk of only expecting to pay a fine or around $250 if the offence was detected (May et al 1984:184). In terms of commercial pressures the Report noted a survey of long distance owner/drivers by the NSW Freight Transport Industry Council which concluded they were:

...overloading and speeding in order to get and keep regular work with companies. They are working excessively long hours and attempting to cut costs on comprehensive and personal insurance and sometimes on vehicle maintenance (WD Scott, 1984 cited in May et al, 1984:184).

The Inquiry also heard suggestions that ease of entry of entry into the industry, including the lending practices of finance companies (discussed below) intensified competition for work and downward pressure on freight rates (May et al, 1984:197).

Too many of the entrants to the industry are insufficiently aware of the capital requirements that are usually necessary to stay in operation. The safety implications of this are developed

elsewhere and are the primary motivation behind the Inquiry's recommendations in relation to quality licensing which tackles the problem of the poorly prepared and uninformed operators (May et al 1984:204).

The Report identified two major structural flaws in existing arrangements for maintaining safety in the road freight industry.

Firstly, the detection and enforcement system focuses almost entirely on the driver of the vehicle, and exclusively so in the case of the long distance owner-driver. The Inquiry however received consistent evidence that the freight forwarder, agent and broker also have a considerable role to play in influencing the observance and non-observance of safety regulations. Secondly, the existing system turns solely around the detection of breaches in specific cases on the road. As such it does not attempt to monitor the performance of operators over a period, although this is the most effective way to gauge safety behaviour, and cost-effective devices and systems appear to be available to permit this to be achieved (May et al, 1984:166).

To resolve these problems Inquiry recommendations included a substantial increase in fines for breaches, introduction of short licence suspension, the use of tachographs and the introduction of an operator licensing system that would include freight forwarders, brokers and loading agents. The aim of operator licensing was to lift the standards (including business skills) that affected safety and a key role of the licensing body would be to identify persistent offenders who could then be targeted with effective sanctions, including suspension of their operating licence. These recommendations were not acted upon at least partly due to fierce resistance to them on the part of the industry. This might well be regarded as a tragic outcome in the light of what occurred over the next five years, culminating in the Cowper smash and a final widespread acknowledgment that the industry was running 'out of control.' The crisis of the late 1980s/early 1990s generated a new round of inquiries and reports which drew attention to the impact of commercial practices on safety although once again none of the regulatory changes brought in to address safety effectively addressed these issues.

In its 1989 report, *Concerning Alert Drivers and Safe Speeds for Heavy Vehicles*, STAYSAFE pointed to reward and other pressures on drivers and argued that operator accountability could only be improved if the incitement to misbehave was addressed:

14.1.1 STAYSAFE received substantial anecdotal evidence of drivers being rewarded for achieving delivery times which necessitated speeding and inadequate rest, and of drivers being penalised for failing to achieve such deadline. In some cases, contracts threaten penalties if deliveries are late without adequate excuse.

14.1.2 Some drivers claimed that they were told by owners or freight forwarders "get it there by 7.00 am, or don't bother to come back for more work." The "just-in-time" (JIT) manufacturing strategy was suggested as possibly contributing to this problem. STAYSAFE accepts that such practices probably do occur and sees them as very difficult to stop.

14.1.3 STAYSAFE understands that an exploration is in hand within the Roads and Traffic Authority of means of prosecuting unscrupulous freight forwarders. STAYSAFE ***considers that rewards or penalties inciting illegal operations should themselves be clearly illegal, and those offering such inducements, regardless of driver explanation, should be subject to substantial penalties*** (emphasis in original, *STAYSAFE,* 1989).

As far as this Inquiry is aware the mooted RTA response never eventuated nor was there any other regulatory response to this strong recommendation.

Within a year a similar raft of issues was raised before the Coronial Inquest into the 1989 Cowper tragedy including unreasonable trip schedules, arrival time penalties/bonuses, requiring drivers to load, and using refusal to renew contracts to pressure owner/drivers to engage in unfair dangerous practices. The Coroner found evidence of excessive demands on drivers almost wholly anecdotal but added that the truck driver causing the incident that led to 20 deaths was:

Paid a fee per trip plus a fee per kilometre travelled. The more trips he fitted in, and the further he drove each day, the more he was paid. Such a method of remuneration is decidedly unhealthy (Coroners Court of NSW, 1990:27).

It should be noted in passing that despite this observation 10 years later trip-based payment systems remained pervasive in the industry, frequently applying to employee drivers as well as owner/drivers. It has been linked to more recent serious incidents such as the Blanchetown road crash where a truck driven a by a fatigued driver ploughed into several cars killing six motorists. The Coroner's comments echo those of his Cowper disaster counterpart.

The extent to which the current system, whereby drivers are paid by the trip, or by the kilometre represents an incentive to break the law (the evidence from this inquest certainly proves that it does), and whether it is possible to design a different system which provides drivers with more incentive to comply with the law, and with safe work practices (cited in House of Representatives Standing Committee on Communications, Transport and the Arts, 2000 page 96).

It should be noted that the driver in this case was an employee not a subcontractor. However, what is perhaps notable about road transport is the similarity in payment systems between many of those in either category, narrowing the differences that might otherwise be expected. The Report will return to issue of payment by results systems. At this point it is worth noting that the Coroner identified a situation where the driver and other drivers employed by the same company were regularly doing trips that should take two and half days (if logbooks were properly abided by) in a day and half. Drivers were encouraged to undertake trips in this time by a mixture of reward pressures (receiving $440 for Adelaide/Sydney return trip) and scheduling pressure imposed by the company (in relation to the Blanchetown smash an early arrival was specified on both the written manifest and on an envelope). After interviewing a range of drivers employed by WRB the Coroner formed the view that, despite management claims to the contrary, unrealistic schedules that breached both road transport and OHS legislation were the norm. Describing a typical Adelaide/Sydney trip time of 17 hours Coroner Chivell observed that the company:

...had made no effort to provide accommodation or other systems of work with which drivers could comply with their statutory obligations, apart from during one period when they were carrying "time sensitive" freight. At this stage, they were obliged by contract to run a "shuttle service", and their drivers were provided with accommodation at Goulburn, and later at Golgol. This practice was discontinued when they lost the contract (Coronors Court of South Australia, 1999 page 22).

In many respects the Coroner's findings in relation to the Blanchetown incident mirrored earlier comments of District Court Judge Lowrie when sentencing the truck driver involved (Brian Douglas Snewin) on a charge of causing death by dangerous driving. It is worth reproducing some of these comments, as they highlight the interconnection between low pay/trip based payment and scheduling pressures/long hours with safety, and the judge's view that these problems were by no means atypical.

It is not the first time I have heard how wage rates relate kilometres driven and the physical demand at times put on drivers by irresponsible employers to comply with schedules. I am

mot surprised with those submissions. It was said that you worked for one major trucking company, an interstate company, and found you could not financially survive because of the long hours and the small amount of remuneration and, of course, not assisted by vehicle breakdowns.

I am told you resigned from a number of positions because of the nature of these driving schedules and turn around times and delays. You clearly could not cope financially. Again I have heard of these difficulties with these so-called log books. It was mentioned that in one State, for instance, there is no requirement for log books and subsequently there is the impossibility of monitoring driving situations.

These matters really must be addressed by not only legislation but the industry…The details of your driving in the prior week from Adelaide to Sydney are simply unbelievable but no doubt you accepted the tasks as directed by management of this firm. And, indeed, looking at those hours and schedules it always spelt disaster.

I am told it was a common practice with this company to supply you with stimulants. When I look at these schedules…It is no wonder you had no concentration on that day or the next day…The conduct of those companies and the schedule is extremely culpable conduct (*R v Brian Douglas Snewin*, 1997 sentencing decision at pages 1-2).

Returning to the Cowper inquest the Coroner there drew attention to other commercial practices that impinged on safety. Turning to the issue of chain of contractual arrangements from those offering the loads to the actual driving of truck by a driver using a prime mover and trailer (with several worn tyres at the time of incident) owned by other parties, the Cowper disaster Coroner observed:

It is those drivers most dependent on loading contractors for their livelihood who are susceptible to unreasonable demands.

In this regard it has been submitted that these loading contractors should themselves be licensed, so that the opportunity by them of breaches of safety laws could result in they themselves being punished, and having their own licenses suspended.

Both Mr McPhee and Mr Robertson of the Road Transport Association were critical of loading agencies, which act as middle men, getting jobs done as cheaply as possible and taking his margin. It often follows that the owner-driver who is so dependent on them is forced to his own loading in addition to his own driving, so adding to the risk of fatigue.

The evidence at the inquest showed that the arrangements between the deceased truck driver and the owners of the prime mover and semi trailer were very loose, and not conducive to safe, careful driving. Tragedy resulted.

A case has been made out for the licensing of loading agents to ensure that they carry out their work in a responsible way, with a concentration on driver welfare as well as profit margins.

It has been reported (SMH 29-2-1990) that at a road safety summit organised by the major trucking companies the setting of unrealistic delivery schedules was criticised, and it was decided that freight consignors should be made accountable for checking that drivers can make their journeys with speed and time limits.

In view of other recommendations made, I do not recommend that action in this regard commence immediately, but rather that the RTA give the matter earnest consideration with a view to implementing such a scheme in the future (Coroners Court of NSW, 1990:28-29).

Again, as with the 1989 STAYSAFE report, the Inquiry is unaware of any action being taken in this regard. Trip-based payment remains common throughout the industry, consignors/loading agents were not licensed, unrealistic delivery schedules remain a common source of complaint (see below) and subcontracting arrangements remain loose and unregulated (at least when it comes to enforcement).

Much of the evidence collected by various inquiries linking safety to commercial/industrial practices was anecdotal although it should be added that this label could equally apply to most evidence tendered to inquiries, coronial inquests and the like via written or verbal submissions. Further, given that drivers and other parties had made these claims over many years would suggest, at the very least, that they warranted serious investigation.

However, it would be entirely wrong to believe that the evidence on the effect of commercial/industrial practices on safety is either entirely anecdotal or only based on testimony given to inquiries or coronial inquests. Indeed, the first attempts to systematically measure these effects were undertaken more than a decade ago. In 1990 Hensher and Battellino published a paper entitled 'Long-distance trucking: why do drivers speed' which specifically tested a number of hypotheses about the impact of commercial/industrial conditions and practices on driving behaviour. Their evidence was derived from a pilot survey of 46 drivers (31 employee-drivers and 15 owner/drivers) undertaken at a outer Sydney truck terminal in September 1989. In terms of age and level of experience the survey sample revealed that most had been driving trucks over 10 years. Hensher and Battellino (1990:541) observed that this profile, as well as details on earnings was not consistent with media portrayals of drivers as being in the industry for 'quick rewards' at the expense of safety. It should also be noted in passing that this workforce profile is consistent with the survey evidence collected for this Inquiry (see Appendix 3) and other (large and representative) surveys (see NOHSC, 1992 and Williamson et al, 2000). While the media no longer emphasises the 'quick returns' scenario (hardly surprising given driver complaints about they capacity to survive), a parallel argument has been mounted by some observers over the last decade to suggest owner/drivers would work excessive hours, speed etc even if their payment levels were improved. This contention, commonly raised in relation to the debate about minimum freight rates, is predicated on a 'quick returns' view of owner/drivers which, while it may apply to some, does not match up with the road transport workforce. If owner/drivers, and other drivers for that matter, were primarily driven by a desire for 'quick returns' most would have left the industry many years ago (and average length of employment in the industry would be far lower).

Returning to the issue of commercial/industrial practices, Hensher and Battellino (1990:542-543) found little evidence of imposed tight schedules on longer trips. However, drivers made constant reference to the requirement that shorter haul deliveries between Sydney/Melbourne and Sydney/Brisbane had to be overnight and the reasonableness of schedules was significantly affected by time spent getting loaded/unloaded. With regard to the latter, drivers complained of having to arrive early to avoid being caught in queues at warehouses, freight depots or manufactures; the need to travel across the city in peak hour or make multiple drops upon arrival; and preference given local/intra urban trucks in unloading. For the freight forwarder, warehouse or load recipient giving preference to intra-urban trucks was logical given that these drivers were being paid by the hour and time spent waiting therefore represented a cost. On the other hand, long distance drivers were typically paid on a per-tonne or per-trip/kilometre basis without demurrage, so delaying unloading of their trucks imposed no direct cost on the client. For owner/drivers in particular, delays at loading also increased the risk of missing another load or delivery time (Hensher and Battellino, 1990:543-544)..

The weak bargaining position of owner/drivers in terms of accepting loads at particular rates, usually offered on a take it or leave it basis by load owners or transport companies, was

exacerbated by an over-supply of drivers. Disputing the view of an earlier (1979) inquiry into long distance trucking by the Bureau of Transport Economics that argued over-supply was a short-term disequilibrium problem that would ultimately correct itself, Hensher and Battellino stated:

Our investigations in 1989 indicate firstly that there is possibly still an oversupply of drivers in the industry, suggesting that this is not a short term disequilibrium problem, but a structural feature of the industry, and secondly that it is not necessarily only the owner driver segment which is responsible for this oversupply situation (Hensher and Battellino, 1990:545).

With regard to freight rates Hensher and Battellino (1990:545-546) note a decline in rates over the previous decade and the intense level of competition on the large Sydney/Melbourne corridor (with its 10-12 hour trip times and emphasis on overnight delivery). They also refer to problems of low 'backloading' rates on longer routes to destinations (Perth, Adelaide and Brisbane) with a pronounced imbalance in terms of two-way freight movement. Whereas Linklater's late 1970s studies had reported drivers earned high income-levels relative to their education, Hensher and Battellino (1990:546) found this had not been sustained into the late 1980s, especially given the exceptionally long hours worked, with owner/drivers earning much lower incomes than employee drivers. They found that drivers were paid according to a diverse array of systems, ranging from fixed wages (22.6%) through to a percentage of the earnings of the truck (19.4%) or a set trip rate (25.8%). Examining the issue of average trip speed, Hensher and Battellino (1990:551-552) identified five significant variables. For employee drivers, higher average speed was associated with drug-use (drug-using drivers drove faster), payment system (drivers paid on a trip rate basis drove an average 15 kmh faster than those on fixed rates) and vehicle registration (vehicles registered in NSW travelled an average 15kmh slower than federal-registered trucks). For owner/drivers, increased average trip speed was positively associated with drug use, trip time/scheduling (those arriving before 10am had higher speeds), time spent waiting for a load prior to departure (those waiting had higher speeds) and length of trip (longer trips were associated with higher speeds).

In concluding, Hensher and Battellino stated that they had:

…confirmed our initial hypothesis that the underlying economic conditions in the industry are a significant contributor to the on-road behaviour of drivers. These conditions, which manifest themselves in declining freight rates, tightening schedules and increasing competition confront drivers daily as they try to forge a living on the road. If the problem of safety on our roads is to be addressed, and solved satisfactorily, it is important to look beyond the symptoms of speeding, infringement of driving time regulations, and driver fatigue and consider the underlying causes which result in this behaviour. The data collected in the pilot survey has provided a start in analysing the relationship between these symptoms and possible causes which we believe will add to the understanding of the structure and the operations of the trucking industry in Australia and form the basis for recommendations for changes which will contribute to improving safety on the roads (Hensher and Battellino, 1990:553).

It is worth noting in passing that this study was undertaken with a seeding grant from the Federal Office of Road Safety (FORS) in the federal Department of Transport and Communications. Following this result, FORS funded a more extensive study by Hensher and a number of colleagues (Hensher et al 1991) where a survey of 820 drivers was undertaken to explore much the same issues. In terms of workforce profile, findings confirmed the pilot survey. It revealed an experienced workforce (70% had been driving more than 10 years), working an average of 105 hours per week (65% of which were driving) and driving around 200,000 kms per year for a relatively poor income (36% earned less than $15,000 in 1989/90).

The great majority of employee drivers (79%) were paid directly in relation to the earnings of the truck. For owner/drivers the heavy commitments occasioned in purchasing a truck was illustrated by the low deposit and short average repayment term of 4.25 years with average monthly repayments of $2500 (amounting to the second highest component of costs after fuel Hensher et al, 1991:100). The main issues confronting owner/drivers were low freight rates relative to their operating costs.

As with the earlier pilot survey, Hensher et al (1991:101) found that drivers spent considerable time (an average of 3.5 hours) on off-road activities (loading/unloading, maintenance etc) before commencing a trip. When they sampled particular trips Hensher et al found that 35% of drivers were travelling to a set schedule but 60% of drivers reported that even where freight forwarders hadn't set a schedule a self-imposed arrival time was set, primary due to concerns about queuing and getting the next load. Of those drivers on a set schedule, a small proportion was offered incentives (2.7%) but a quarter indicated they would be penalised for late arrival (Hensher et al, 1991:48). Around half of all drivers felt freight companies demanded unreasonably tight schedules (the figure was slightly lower for large fleet drivers Hensher et al, 1991:51). Average trip speed was highest amongst small fleet drivers (82.01 kph) and younger drivers aged 17-24 years (84.72 kph) compared to a overall average of 81.06 kph.

Econometric analysis paralleling the pilot study revealed a similar pattern of results. For both owner/drivers and employers of drivers, economic rewards were a major influence on the propensity to speed. In particular, Hensher et al (1991:96) found:

There is very strong evidence to support the primary hypothesis that the trip rate received by the owner driver (ie gross earnings) and the freight rate obtained by the company using an employee driver have a significant influence on the propensity to speed. The negative relationship is stronger for owner drivers as might be expected…The main impetus of this study has been confirmed: on-road performance is strongly linked to economic reward.

They draw a particular bead at the safety consequences of trip-based payment:

Any deviation from a fixed salary tends to encourage practices designed to increase economic reward which are not synergetic with reducing exposure to risk (Hensher et al, 1991:102).

As part of their study, Hensher et al (1991:28-29) had also considered the insecurity of owner/drivers without contracts or regular load arrangements and the problem of backloading (involving heavily discounted freight rates) where two-way freight movement imbalances made return loads scarce. Over 40% of drivers had rejected a load in the past 12 months the most common reason was that the rate was too low, with other reasons being the unreliability of payment by the customer (7.4%). Only a small number of loads were rejected on the basis of being overweight (4.5%) or that it would require exceeding legal driving limits (2.7% Hensher et al, 1991:30). The combination of competition, low freight rates and uncertainty of loads and consequent uncertainty of earnings had other safety-related effects, most notably that it encouraged:

…the practice of the self-imposed schedules and the taking of stimulants to enable extension of the productive working week. While the extended working week does increase the earnings, the incidence of productive (ie driving) time decreases as total working hours increases. Any strategy which can reduce the uncertainty of earnings must reduce the hours of total work, increase the amount of sleep time and consequently reduce the incidence of self-imposed schedules and hence the use of stimulants.

2. Regular contracts are a preferred form of load allocation, initially obtained by a process of competitive bidding, with possibly relatively short contracts in order to ensure that bid prices

remain competitive. This may be the only way to minimise the amount the amount of unproductive waiting time and to eventually prune the industry. Major implementation of competitive bidding in other transport industries is seen as a preferred alternative to complete economic deregulation primarily because of the inability of deregulation to manifest an acceptable program of internalising the negative externalities of unfettered competition (Hensher et al, 1991:102).

In a later paper based on survey results for 402 drivers, Golob and Hensher (1994) echoed previous findings. As can be seen from Figure 1 the study considered a range of influences on speeding, including pressure from freight owners (and a similar figure can be found in Hensher et al 1991). The Report has included this Figure to demonstrate that a relationship between commercial practices, industry structures and safety is not a revelation, nor is recognition that load owners are part of this equation (however much this may appear to several parties to this Inquiry).

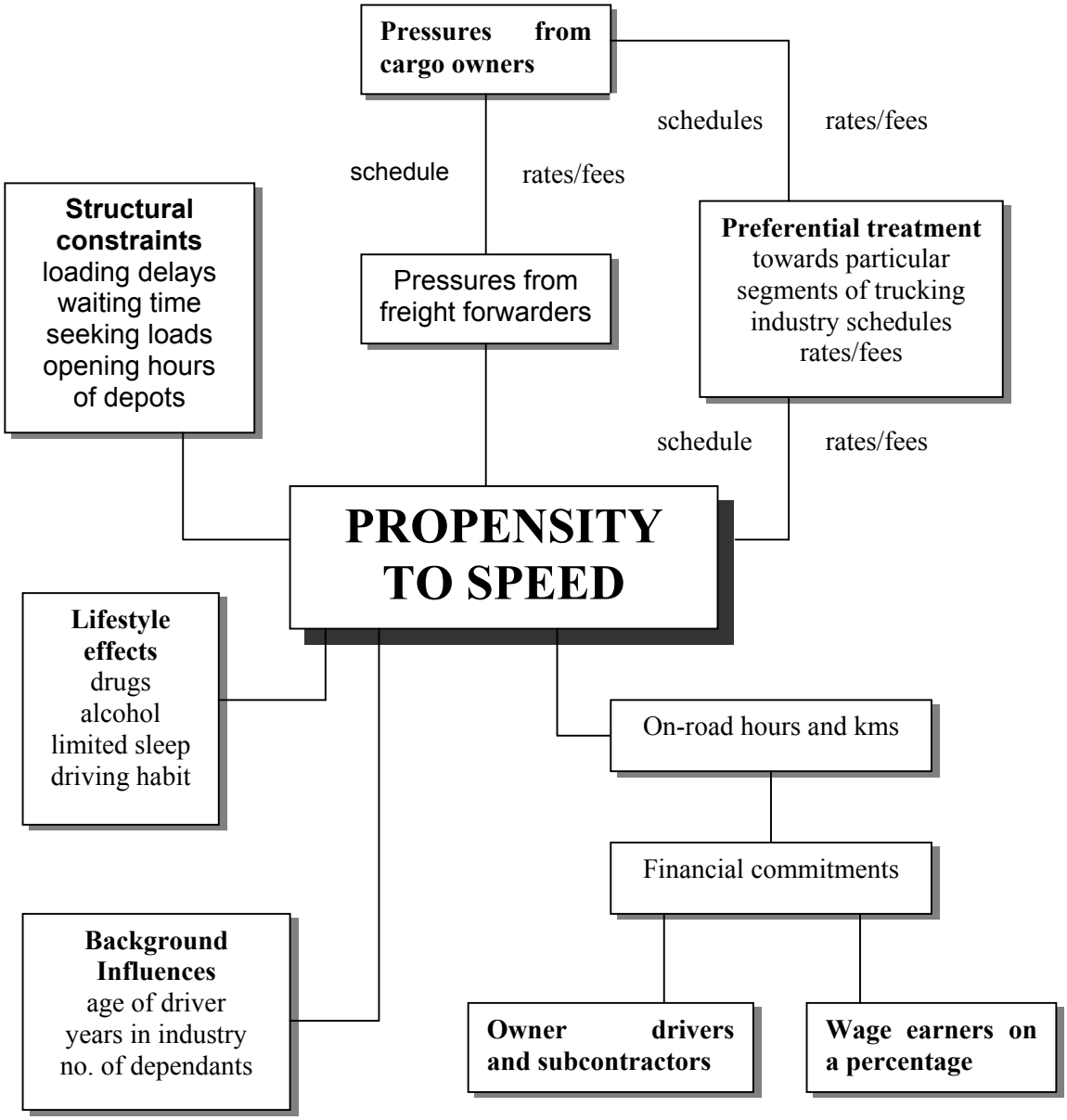
In their study Golob and Hensher queried the drawing of a simple dichotomy between owner/drivers and employee drivers. (1994:29). They argued that small company drivers had some of the worst practices in terms of speeding, drug-use and traffic fines and that a more useful explanatory classification was in terms of the nature of contracts, work practices and the ability to secure loads. For example, drivers on regular contracts were less likely to use drugs or speed (though they attract a higher number of speeding fines) which Golob and Hensher saw as having important policy implications, along with the earnings issue more generally.

Looking at the results in more detail it can be noted that once again it was found that earnings exercised a significant influence on on-road behaviour. Thirty seven percent of drivers had a schedule imposed by an employer or freight forwarder and, these drivers on such trips were more likely to be fined for speeding. For the remainder, propensity to self-impose a schedule, and speed/attract fines, was associated with the time spent securing a load and final delivery (carrying perishable goods and, to a lesser extent, heavier gross truck weight also influenced scheduling and other behaviour). Self-imposed schedules were, in turn, the most important influence on the propensity to take stimulant drugs. Golob and Hensher (1994:25) found the greatest influence on average trip speed was the earning rates of both owner/drivers and employee drivers. Drivers with higher earnings rates exhibit lower speeds, and this is particularly true for owner/drivers. The last finding in particular is important because it clearly suggests improving earning rates for owner/drivers would alter the on-road behaviour of owner/drivers contrary to the a priori reasoning of a number of other reports (such as *Driving Forward*) discussed below. This observation is also reinforced by other findings in relation to load/contract insecurity.

Golob and Hensher concluded by arguing that, rather than focusing on truck-safety, it was essential to look at the totality of driver health and wellbeing, most notably the 'lifestyle' that evolved in connection to the job as well as substantial externalities associated with present arrangements. Taking the reward and insecurity pressures as a whole they stated:

These positive and negative influences when taken together are expressing a 'lifestyle' phenomenon which in part is the historical product of pressures in the market to secure loads in order to earn an acceptable wage. Any assistance to this industry which can reduce the pressures in the market to a level which will reduce the reliance on pills must be desirable (even after allowing for the possibility of somewhat higher rates of moving goods). The current rates have not internalised the negative externalities rampant in this industry, which have spawned a lifestyle encouraging pill taking in order to stay awake long enough to improve the financial situation. The use of stimulants is as widespread in the employee driver sector as it is in the owner drivers and is regarded by many drivers as an acceptable practice (Hensher et al 1992, 1993).

Figure 2: Major elements of the Golob and Hensher (1994) Study



...Lifestyle factors appear to have evolved as a result of the ease of entry to the industry coupled with its highly competitive nature which demands non-routine and unpredictable work practices for a significant number of drivers in the industry. There appears to be a case for much more stringent safety regulations centred on the health of the driver as distinct from the 'health of the rig'. There is a great temptation for commentators to argue if someone wants to enter this industry, get burdened with high debts and work excessive hours to 'make a quid' then they should be allowed to. This may be acceptable wisdom if safety of human resources at large were not at risk. It is precisely because of the negative externalities aligned to safety that changes are required in the competitive practices in the industry (Golob and Hensher, 1994:28-29).

In 1995 Arblaster and colleagues completed a report funded by a research grant from the National Occupational Health and Safety Commission (NOHSC) based on interviews with 57 long distance truck drivers based in South Australia, 52 partners and a small group of managers and ex-drivers. Drivers also filled out a time-use diary over a two-week period. Though using quite a small survey population, the pattern of results was generally consistent with those of earlier studies already discussed. For example, the study found evidence of unrealistic trip schedules, such as a trip time of 24 hours between Adelaide and Perth that translated into an average speed of 112 kilometres per hour without breaks (Arblaster et al, 1995:84). As with earlier studies they drew a strong connection between scheduling and drug use. Loading and unloading delays were another serious issue. Indeed, when asked to nominate solutions to OHS problems in the industry 88% of drivers nominated cutting schedule times and 74% nominated restructuring loading/unloading which aside from improved road conditions (63%), far outranked all other issues.

It is worth noting that the most recent government inquiry that addressed safety in the trucking industry (aside from this one) namely the federal House of Representatives Standing Committee on Communication, Transport and the Arts inquiry into managing fatigue in transport received a number of submissions raising commercial issues. As with the present Inquiry the submissions came from a wide range of sources. For example, John Liszakam from NSW who had spent 37 years in the road transport in Australia and Europe in long distance driving (and five years in management positions) referred to the problems posed by scheduling pressure and customers stipulating overnight deliveries. Similarly, a submission from the Western Australian Minister for Transport, Murray Criddle, observed:

The responsibility for the working arrangements of truck and bus drivers generally lies with the prime contractor or employer. They set the delivery schedule/timetable often in conjunction with the client. The driver may have the least amount of say on the scheduling of his trip.

Company drivers and subcontractors may be paid by the trip or on the distance travelled. This type of reward structure encourages greater time behind the wheel and in the case of a subcontractor business survival may be dependent on achieving at least a minimum level of trips. The stories are legion of drivers who are told that unless they are prepared to do a run somebody else will be found who will. In many such cases the driver will be starting a trip already tired.

Unless there are steps to prevent drivers doing excessive hours either willingly or under direction, sufficient provision for rest and sleep will be a secondary consideration. Ensuring drivers are well rested at the start of the trip and have opportunity for rest and sleep in a schedule is the responsibility of the prime contractor or employer as well as the driver.

(submission to House of Representatives Standing Committee on Communications, Transport and the Arts Inquiry into Managing Fatigue in Transport, page 3).

In its report, the federal inquiry (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:93) noted the significant drive towards increasing economic efficiency in transport over the past 20 years wrought by a number of factors. This included changes to government involvement in providing and regulating transport, technical improvements, company attempts to contain costs and pressure from customers. The report went on to note there was now a growing body of evidence that a point was being reached where 'best practice in efficiency is jeopardising best practice in safety (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:93). The Report noted it had received many submissions that competitive pressures were the most important factor contributing to fatigue. In relation to road transport in particular, the report noted evidence on the impact of competition on freight rates and the effects of this, in turn, on safety as well as the dangers posed by paying drivers on the basis of kilometers driven.

Without in any way disputing this evidence the Report then argues that there is little the government can do to intervene in economic matters, that some companies will make poor or good commercial decisions and government responsibility should be to protect third parties such as other road users. Some of the report's views are worth quoting:

In the first instance, prime responsibility for ensuring that the market for transport operates in a fair manner lies with the industry itself. Not just with the individual operators who are pressured into making unsustainable decisions, but also with the customers and freight-forwarders who have over the years, imposed unrealistic delivery expectations at the same time as benefiting from the reduced rates they have extracted.

It is simply not feasible for governments to make and impose decisions about optimal staffing levels within individual transport companies; or about the rates of payment in haulage contracts; or about payment methodologies. These are matters which the industry itself needs to resolve.

That said, governments do have a clear responsibility for protecting the safety of third parties (such as other road users), and there are some areas where governments may be able to help industry fix its problems (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:97).

The Report then goes on to recommend that federal, state and territory governments collaborate to develop programs to enhance the business skills of operators (with funding to improve owner/operator access to them). Another recommendation is the federal Minister for Transport and Regional Services conduct a series of industry round table meetings to examine the extent that economic pressures pose a threat to public safety and what measures in relation to improve staffing levels and freight rates. The report urges that the Productivity Commission be directed to take fatigue and fatigue management into account in any future inquiries into transport. As this Inquiry noted in Section Two, health and safety issues (even purely in terms of their economic costs) received no meaningful consideration in the recent Productivity Commission inquiry into rail transport so the last recommendation is to be welcomed - if still long overdue. The suggestion in relation to enhancing the business skills of transport operators and operator accreditation/licensing will be examined below, as will the issues of commercial practices for which the federal report advocated industry-round-table discussion.

Without prejudging its own findings, this Inquiry found some perplexing aspects in the logic of the federal inquiry, as indicated in the quote cited above. The federal report acknowledges that government provision of transport and regulatory policies (including competition

policies) have affected the level of competition in the industry but then goes on to say government has no business intervening in commercial arrangements. Does this mean we are to ignore past policies that may have contributed to the current situation or that policies promoting competition are fine but intervention designed to address any adverse health and safety effects of this are only acceptable where third parties (ie not workers) are put at risk? How are transport industry round tables to address the price and scheduling pressures on transport operators from customers (also acknowledged in the report)? This Inquiry would also make the simple observation that all markets and commercial arrangements are subject to some form of regulation.

At other points the federal report recognises the need for government intervention to influence commercial arrangements, even if this is done indirectly. In a later section (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:106) argues for greater use of OHS legislation in relation to transport industry accidents. This can be seen as a means of reshaping commercial arrangements and the potential for this is explored in some depth by this Inquiry. The report also (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:113-116) acknowledges the problem of too many operators and poor performance. It argued that if voluntary accreditation did not lead to a measurable improvement in performance by 2002 then a licensing system covering operators, freight forwarders, agents and brokers should be considered.

3.1.2 Recent Inquiries into Truck Crashes in New Zealand and Road Haulage in the United Kingdom

The Inquiry also examined a number of overseas inquiries into trucking safety to see if parallel issues were raised. In particular, it looked at the report of a recent inquiry into truck crashes undertaken by the Transport Committee of the New Zealand House of Representatives (Storey, 1996). The inquiry was sparked by the death of 118 people in 105 crashes involving trucks in the previous year. The Committee identified a number of disturbing practices including the signing of contracts for owner-drivers that effectively required them to breach traffic laws, requiring drivers to work excessive hours and setting work schedules that encouraged drivers to travel at excessive speeds (Storey, 1996:9). The Report pointed out that breaches of law were widespread and a direct consequence of the commercial advantage pertaining to such behaviour.

Until truck drivers and management start respecting and obeying the law, no attempts to reduce truck crashes will succeed. At present, lawbreakers are being given an economic advantage which will not disappear until a commitment to safety has a greater economic benefit. This severely handicaps the majority of responsible operators (Storey,1996:9).

The Report argued that trucking safety was the responsibility of all those involved in the road freight task, namely freight forwarders, transport operators and the manufacturers and producers who organise transportation of their goods (Storey, 1996:9-10). Indeed, in defining management for the purpose of the inquiry, the report specifically included fleet managers, owner/drivers, tradespersons operating their own truck, freight forwarders and all those 'who set delivery times, rates and other terms and conditions' (Storey, 1996:19). In explaining an increasing level of risk taking the report placed particular emphasis on commercial pressures and policies that had intensified competition over freight rates and work. Four quotes from this part of the report illustrate the point. The first quote is from an experience truck business operator:

The real fact of the matter is that those who keep the rates down are doing so by not paying their fair dues and cheating the system. The competition is not being done on a fair playing field. Uneconomic units on the road go a long way to contributing to the accident problem

simply because drivers have to work long hours, they get tired or they don't have the cash flow to effect repairs to their vehicles (cited in Storey 1996:21).

The Insurance Council of New Zealand was also concerned by the safety implications of intensified competition.

Increased competition in the transport industry has resulted in drivers extending driving hours in order to maintain their income. The problem is especially acute for owner drivers who have been forced to reduce their charge out rate to maintain business. The Council understands many fleet operators add to the problem by pressing drivers to drive beyond legal hours or ignore the issue when their drivers do (cited in Storey 1996:21).

Another experienced transport manager offered the following views on the impact of deregulation:

Road transport operations in New Zealand have undergone significant change over the last ten years. Deregulation and the competitive NZ business environment have allowed transport operators to extend their operations over large geographical areas…

The effect of these changes has caused many operators to stretch their operations to within fine limits in order to gain a competitive edge. This includes tight control on operating costs and the expectation of drivers to work to the limits of regulation.

In some circumstances, those (ie freight forwarders, dispatchers) who cause the use of heavy motor vehicles are unaware of the regulations and transport management factors controlling the use of heavy motor vehicles. Under these circumstances the level of risk is extremely high.

In many situations drivers are compelled to work under conditions that fail to have adequate control measures applied to those who are responsible for transport operations. Operators with strong internal policies, controlled procedures and reasonable expectations of their drivers are better equipped to operate within the current environment (cited in Storey 1996:21-22).

The report went on to cite examples of contracts, timetables and other evidence demonstrating how speeding by drivers was legitimated and how drivers were required to work excessive hours. The vulnerability of drivers to accept these conditions without complaint was illustrated by the response of one driver to Police after he had been pulled over:

On 1 March 1995, I ran out of hours at Rotorua, I rang the manager and told him to come and pick the truck up. He told me that if I wasn't going to go over my hours I might as well f... off (cited in Storey 1996:31).

In its recommendations, the report urges that measures be taken to enforce a level playing field so that 'an economic advantage is not given to those who break the law and those who play by the rules can compete fairly' (Story, 1996:32. Other pertinent recommendations are discussed elsewhere in this Report)

The overall picture painted in the New Zealand inquiry is consistent with Australian evidence already cited on the impact of commercial practices on safety. As will be shown, it is also consistent with evidence presented to this Inquiry.

In addition to the New Zealand inquiry the Inquiry was able to examine an even more recent report undertaken by the UK House of Commons Committee of Environment, Transport and Regional Affairs and released in July 2000. A number of the findings of this report are discussed in a later section as they pertain to the issue of operator licensing. Nevertheless, a

number of the findings relevant to the current Inquiry can be summarised here. The report found that the profitability and viability of the road haulage industry had been undermined by a longstanding problem of very low haulage or freight rates (Committee of Environment, Transport and Regional Affairs, 2000:xxii). The report attributed three factors that had kept rates so low namely, entry into the industry was too easy creating an oversupply of operators, there was competition from other European competitors following the 1998 EU cabotage regulation, and some companies routinely ignored regulation to secure a commercial advantage.

The Committee found that, despite the efforts of the Vehicle Inspectorate and police, a significant minority of operators flouted regulations relating to driving hours, vehicle maintenance/defects and other safety-related issues. The Committee (2000:xxvi) noted that there was all but unanimous support for the Inspectorate and Police to have the power to impound illegally operated vehicles even where this involved perishable loads. There was also strong support for substantially increasing resources to the Inspectorate and police so they could more effectively carry out enforcement, and especially to target illegitimate operators. One of the Committee's (2000:xxviii) recommendations was for an increased resourcing of regulatory efforts to target UK 'cowboy' operators and to undertake more inspections of foreign operators. The Committee (2000:xxxi) strongly supported the application of the European Union Working Time Directive but questioned the exemption of self-employed drivers was unjustified (fatigue is a problem for all drivers) and created a loophole that induced the movement of drivers into this category.

3.1.3 Conclusion

In sum, this Inquiry uncovered research evidence as well as evidence presented to various forms of inquiries attesting to a connection between commercial/industrial practices and safety in the long distance trucking industry since the early 1980s if not before. The evidence was more than anecdotal, it was sufficiently consistent to warrant concern, and it was known to at least some industry representatives and government agencies. Moreover, recent inquiries into the road transport industry in New Zealand and the United Kingdom reveal a number of essentially similar findings.

The evidence suggested some clear policy responses to improve safety in the industry. Quite apart from examples of this already presented, a NRTC (1993:17) discussion paper on improving operator performance noted that:

The suggestion that the road transport industry comprises a core of responsible operators (often larger companies) and a fringe of irresponsible operators can be challenged with the limited data reported in the Appendix… There is some evidence that the market power of freight forwarders, agents and consignors of freight contributes to unsafe practices on the road.

But, as will be demonstrated later, while the report canvassed a number of options from mandatory operator licensing through to self-regulated accreditation, there appears to have been no systematic follow up on the issue by the NRTC for some years.

It remains an intriguing but unanswered question as to why the observations and evidence presented above seldom if ever led to policy responses or regulatory changes. There appear to be two reasons for this. First, a number of those with knowledge of the industry who made submissions to the Inquiry argued that some interest groups have fiercely opposed any consideration limiting commercial or industrial practices from which they derived a benefit. For example, in detailed written and oral submissions Associate Professor Philip Laird from the School of Mathematics and Statistics at Wollongong University traced the history of regulation in the industry over the past 20 years. Amongst other things, Laird made a case that

a number of potentially crucial regulatory reforms such as mandating the fitting of tachographs and operator licensing had been delayed or stymied as a result of industry lobbying. Laird also expressed concern at the national regulatory reform process headed by the NRTC, arguing that the reconfiguration of trucks (notably the increase in dimensions and load carrying capacity) was dictated overwhelmingly by considerations of cost-efficiency rather than safety. With regard to truck configuration the latter interpretation found support from another University of Wollongong academic, Dr Arnold McLean from the School of Engineering and others (see Section Two of this Report). The view that safety has taken a back seat to commercialism is not unique to Australia, being repeatedly expressed by truck safety community organisations that have sprung in a number of countries over the last few years. For example, in a recent report Canadians for Responsible and Safer Highways (CRASH, 2000:1) stated:

In a deregulated free trade environment, the trucking industry is under tremendous pressure to cut costs. In order to maintain or seek competitive advantage, provinces may be under pressure to allow bigger trucks, to allow truckers to work more hours and to otherwise downgrade safety standards.

A second possible reason for the reluctance to address these commercial issues is one highlighted in the recent federal inquiry into managing fatigue in transport. This is the prevailing neo-liberal economic orthodoxy in policy making circles which is geared to promoting competition and seems to view any intervention with regard to markets or commercial practices, for safety or other reasons, as anathema.

The Inquiry is not in a position to fully evaluate these contentions although further evidence is presented in later sections of the Report. Whatever the reason, the Inquiry found it extremely disturbing that clear evidence of the role of commercial practices in encouraging hazardous practices could be apparently ignored, and ignored over a number of years. The evidence collected in the course of the Inquiry reinforced this concern. This evidence overwhelmingly confirmed earlier findings.

3.2 Evidence to this Inquiry

The Inquiry received a substantial number of written and verbal submissions that intense competition, industry tendering practices, low freight rates and pressure from clients was a critical, if not the most fundamental, source of hazardous practices in the industry. The overwhelming majority of parties who gave evidence to the Inquiry accepted that commercial practices had a significant impact on safety. Indeed, the Inquiry was overwhelmed by responses/submissions addressing this point and it was extremely rare to find anyone with detailed knowledge of the industry who disputed this. It is notable that these views were expressed by a wide range of individuals and organisations, many with no obvious interest in presenting this argument and basing their interpretation on a disparate set of sources (not just anecdotes). The following comments are representative of the views expressed:

In conclusion, rates paid to carriers and down the chain to owner drivers and drivers are the biggest issue, then the workload and work time not paid by some companies who pay a driver only a kilometre rate with no load/unload time etc paid or customers who won't pay demurrage but still expect the freight on time. Delays deemed acceptable or totally ignored by consignors or consignees particularly major companies where time slots reign to suit them only and detention time just won't be paid (or you won't have the work), then road conditions and rules made and enforced by people who have mostly never been in a truck. These issues, if addressed, would change the industry for the better and vastly improve its safety (written submission, employee B-Double driver with 25 years experience in the industry, western NSW).

We keep hearing the word commerciality, we keep hearing the word marketplace…what I've come to realise over the past few years is that marketplace is nothing more than terminology for exploitation…its being used by freight forwarders to a lesser degree than some of the clients. The client want that [freight] *moved from A to B* [for] *the bottom dollar. They do not care - you can talk about chain of responsibility and all the rest of it. They don't care - you can talk all you like about chain of responsibility - they do not care who I run over or what happens to me as long as they get that box from there to there with the cheapest rate… I have once challenged a major food retailer about their duty of care in Queensland - they weren't providing me with adequate sleeping quarters and a whole host of other things and I finished up by beating him… I had the law but I didn't have any authority or anybody to back me up with what I was doing. To the point I was told 'you are not to come back in here again' and unfortunately for them I'm just pig-headed enough and didn't go back again.* (oral submission, owner/driver with 30 years in the industry, southern NSW).

Nobody's denying that drivers are not working excessive hours and this is brought about due to the low freight rates, that people are trying to stay viable and trying to earn a living so they're working longer hours than would be desirable just to try and make ends meet… In a lot of instances [over the last 10 years] *there hasn't been any increase in freight rates and since the advent of the GST some freight forwarders that we work for have actually decreased our rate…when you question them about this they argue the ACCC.*(CEO small fleet operator, Victoria)

Today we see a relatively small proportion of operators who can only be described as deliberately and wilfully breaking the laws in regard to vehicle speed, overloading and excessive working hours. Unfortunately other operators, in order to compete, reluctantly resort to some to all or some of these activities either occasionally or regularly… In today's manufacturing world of 'just in time' inventory the risk has generally fallen to the truck driver whereas there is clearly responsibility on management, loading agents and the end customers. There is a culture in Australia among some of the bigger users of road transport where buying power is being extended to drive unrealistic delivery requirements without accountability. These same 'accountable' parties regularly delay trucks for considerable periods of time at receival points which compounds the legal working time problems particularly for owner drivers. Some of this 'market force' power may have interesting possibilities within the Trade Practices legislation (written submission, large transport division manager with 35 years experience in the industry).

Desparate FLEET operators lose any reality between the 'marketing/freight allocation division' and the 'safety division' of their businesses. Many FLEET and OWNER-DRIVER operations are not in a position to control their own destiny. There are many examples of how this desperation transpires; squeezing just one more week out of a set of worn tyres, consistently running overloaded, due to unloading delays, struggling to make a camera site to ensure they get a full 14 hours in the next 24 hour period, every piece of freight can be classified as 'just in time' to achieve the highest return, every trip becomes overnight, drivers demand payment on a kilometer rate etc etc. This desperation leads to rate cutting and the ridiculous situation that has been termed as backloading. These days it would appear that in too many instances, backloading rates are used as a benchmark! Without the introduction of some form of base freight rates, between major ports, transport operators will continue to bastardise their operation to justify some form of pathetic existence (written submission, Owen Driscoll from the largest truck insurer, NTI page 5).

We believe the fundamental Road Safety problems with the trucking industry are excessive speed, driver fatigue and associated drug use. The primary cause of these problems is the lack of financial viability of the trucking industry…The lack of financial viability of the trucking industry is caused by what are seen as extremely low freight rates. In addition, unrealistically short delivery times can also result in drivers exceeding speed limits and

driving whilst fatigued…We believe freight forwarding companies and Transport companies that use subcontractors are a major contributing problem in this area. They place unreasonable and essentially impossible demands on their subcontractors that result in these unsafe practices (written submission, Dallas Booth for the Insurance Council of Australia pages 3-4)

A large percentage of this sector of the industry are owner drivers or small companies that done have the financial ability or resources to identify their costs and rates. With no entry standards for either drivers or companies the only option to gain customers or market share is to cut rates or agree to unrealistic times or schedules. Low rates means longer hours and shorter time frames to achieve demands imposed. This group is subject to abuse by unscrupulous customers, freight forwarders and users of transport, particularly in the area of backloading. Anecdotal evidence indicates that even larger companies suffer from the effects created by these issues as they have to compete in an artificially competitive price market. In Australia there are 42,000 42.5 tonne GVM trucks competing for the freight dollar. Clearly the lack of entry controls makes it too easy to get into the transport business and be unable to maintain the safe standards that should be demanded (written submission Transport Management Australia and the Victorian Road Transport Association)

In the highly competitive and cutthroat environment of the long distance trucking industry unfortunately rates are the weak and vulnerable link in the chain of supply and demand. As such they are usually the first to succumb to the pressure of competition. As a result, when a major client in the transport industry expects more 'productivity' or value for [the] *dollar from their transport contracts rather than being prepared to pay more for the increased service they usually expect their costs to remain the same, if not fall. Consequently, the transport company or freight forwarder has two choices. First, they can choose to absorb the cost increases and deliver improved services at a reduced profit margin… Secondly, and more commonly however, they usually prefer to demand greater efficiency and productivity from their drivers or demand their drivers accept a cut in rates… Unfortunately, the only real limits to efficiency in the long distance trucking industry are notwithstanding legal speed limits are driving hours, how fast the vehicles can go and how fast and for how long the drivers can keep them on the road. For drivers in the industry, increased competition means increased pressure on rates. This is turn means they have to pick up more work, pushing themselves and their families over the limit, driving longer hard and faster just in an effort to maintain their standard of living* (written submission, TWU NSW Branch, page 5).

The intensely competitive nature of the transport industry is recognised by WorkCover as being a major contributing factor to the need perceived by truck drivers and owners to engage in practices which may lead to safety being compromised…a significant proportion of drivers are self-employed owner-operators. It would be fair to regard these drivers as being vulnerable to being confronted with unreasonable consignment conditions (including less-than-generous remuneration) which are apt to be generated by fierce competition between transport contractors. It is realistic to expect that such competition may lead to exploitative behaviour within this industry. WorkCover's observations indicate a considerable body of anecdotal evidence which suggests that the manner in which freighting work is allocated by clients and consignors frequently creates an environment where safety considerations are seriously compromised and drivers, schedulers and others, are induced by commercial pressures to adopt a range of unsafe practices. Some of the practices that might compromise safety are:

- *Acceptance of piece rate methods of payment for long distance work, making some trips economically marginal or unviable.*
- *Loading and unloading times not taken into account when determining safe driving hours.*

- *The need for local deliveries to be made after completing long trips and hence exceeding safe working hours*
- *The elimination of driver changeover stations, once common for LHT companies.*
- *Rostering practices not allowing sufficient recovery time between trips*
- *Delivery times demanded by clients or economic pressure to maximise trips which may include speeding, exceeding safe driving hours, skipping or shortened rest breaks, driver fatigue, taking of drugs and stimulants, inadequate securing of loads, inadequate vehicle maintenance* (written submission, WorkCover NSW, pages 11-12).

Competitive pressures combined with the belief by offenders that they won't get caught, has given some commercial road-users the incentive for non compliance. Unfortunately, this attitude costs the community (including themselves) a large amount of money which could have been better used for community services (written submission, Queensland Transport page 24).

However, whilst we are talking about drugs that is only a symptom of what is happening in the industry, and when you go back to crashes in the industry it comes from outside sources, we are talking about consignors, consignees, for example large supermarkets which have a time schedule from A to B… If you did research or asked a set of questions to core police, police officers who deal with them [truck drivers] on a daily basis …they would tell you the industry has changed.(oral submission, regional police traffic coordinator, southern NSW involved in highway patrol activities for the majority of his almost 30 years service who argued this view was based on direct experience and feedback from operational police)

3.2.1 The Role of Poor Business practices

It is important to note that a number of submissions argued that low freight rates and tight schedules were not only attributable to load owner/client pressure but were also the result of or exacerbated by characteristics of the industry itself. For example, a number of submissions, including that of the Australian Trucking Association (ATA), argued that intense competition for jobs by operators, many of whom lacked training in business skills, did not lead to informed decisions when costing work. The ATA highlighted the low level of training and education in the industry and argued it was imperative that training in business skills was made more widely available to the industry.

The trucking industry currently employs 4.5% of the workforce nationally, yet only receives 0.7% of the training budget (written submission ATA, page 3).

In oral submissions, Mike Edmonds (ATA) and David Anderson (NatRoad) both emphasised that the industry needed to get more active in obtaining training funds, and pointed to a number of recent examples where this had occurred (including a widely distributed business skills/GST training package). Quite a number of others giving evidence to the Inquiry pointed to poor business practices, especially amongst small fleets and owner/drivers, as a major problem.

Some argued that poor business practices were an industry-wide problem. In his submission Dean Croke from the insurer MMI/Allianz Australia argued:

The ongoing financial management of business within the transport industry is an underestimated factor effecting long-term viability. As mentioned, operators in road transport are largely operations driven and have traditionally relied on historical data from the accounting profession as a means of measuring operating performance. This presents a challenge to the industry as this type of reporting often includes tax planning strategies but it

does not adequately factor in the return on investment, and therefore does not present the true performance of the business.

There are four main contributing factors to poor financial management in road transport:

- *industry dependence on accountants who have little or no understanding of the road transport industry as their only guide to business performance;*
- *transport operators not requesting that financial reports be presented in a meaningful way such as in "management account form" rather than traditional tax profit and loss format;*
- *transport operators dependence on historical data (end of financial year) to measure performance instead of more frequent reports as a management tool; and*
- *industry's inability to adequately interpret financial accounts produced by the accounting profession.*

As a result of these factors, the industry generally has a poor understanding of how to adequately assess their costs (written submission, Dean Croke, page 6).

At the same time, the poor business skills argument needs to put in context. For example, while owner/drivers and small operators are seen to be in most need of enhanced management skills, most the Inquiry spoke to had been successfully operated their business over a decade or more and were able to provide detailed breakdowns of their cost structures and revenue flows. A number referred to business courses (some transport industry specific offered by TAFE and other providers) they had undertaken/were completing and at least one pointed to the business efficiencies they had gained through TruckSafe. This lent support to their argument that their current difficulties were not principally the result of poor judgements. While it is clear that some owner/drivers run far more efficiently than others, every owner/driver making submissions to the Inquiry complained that they were under pressure from rising costs and freight rates that had remained stagnant if not fallen over the past decade.

Further, as is noted elsewhere in the Report, problems with 'poor' business practices do not reside simply with transport operators. The Inquiry received repeated complaints of substantial delays in payment (instances of up to three months or more were cited) to operators, especially owner/drivers, for work completed. Indeed, this appeared to be a systemic problem, and one not entirely uncalculated on the part of those who owed the money. Like other responsible businesses, a number of operators stated they chased payments ('I hound them') and, as a last resort, responded to unreasonably delayed payment by marking their records 'do not do work for again'. However, they complained the continued to encounter the same problem with other clients. Others felt they had little choice but to accede to delays where substantial or long-term contracts were involved. While improved business skills may enhance the bargaining power of small operators it is highly unlikely to place them in an equal position with the usually larger and more powerful businesses upon whom they depend for work.

Finally, it needs to be emphasised that 'poor business' practice was more often viewed as a partial rather than as a complete alternative explanation to the pressure emanating from clients and consignors. Nor are the two explanations incompatible. Indeed, the suggestion that poor business practices amongst some transport operators merely serves to exacerbate their already weak bargaining position with load owners seems highly plausible.

For its part, the ATA argued that:

However, there is a second group that directly impacts on this issue – the customer/consignor sector. Research has proven that the trucking industry only controls 40% of the freight task and that customers and consignors need to be made more aware of their responsibility to the safety element of transport. This can be achieved through education and the enforcement of chain of responsibility (written submission, ATA page 4).

3.2.2 Industry tendering practices

The Inquiry received a large number of submissions arguing that tendering practices in the industry often amounted to little more than crude competition to see which transport operator could offer the lowest price for a freight task. This approach was seen as a consequence of intense competition within the industry, with a large number of small operators always at the margins of existence, along with an overriding concern on the part of customers to get their freight delivered at the minimum cost. Customers, it was suggested, almost always took the lowest bid even where they had reason to know or suspect that this price did not represent cost recovery for the operator concerned (and if a small subcontractor was involved almost no opportunity for cross-subsidisation with other trips).

For its part, the ARA saw the structure of the transport industry as contributing to its problems in terms of under-bidding for work. The ARA noted that an investigation of tendering practices amongst its members had proved difficult in terms of making generalisations. Outbound freight was typically organised through standardised contracts that were negotiated directly by the larger retailers (smaller retailers and those in particular locations might use consignors or loading agents). The ARA offered the following observations:

We do know in some cases there are ad hoc deliveries but generally it would appear that for the mainstream arrangements where there is a principal contractor, there is a tender. The tender specifies a range of things, price being one but commitment to standards of quality and driver training are other factors…. [in terms of average contract duration] the survey we did showed between one and three years. There were a couple, I think, that went a bit longer but generally between one and three years. And I think the issue that our people make is that going to the market with those tenders they request and ensure that part of the tender process is an understanding and expectation that people comply with their obligations. Now there's an issue there, I think, once people walk out of there after they negotiate the tender. The structure of the industry of course lends itself to shaving of margins as you go down the line. I think that's a concern we have - that we enter into contracts in fair and profitable way. We enter a commercial arrangement but regrettably its the structure of the industry that creates problems (oral submission, Bill Healey, ARA).

A critical problem identified by the ARA was the subletting of work at reduced margins once a tender has been settled with a principal contractor, something it sees as consequence of the structure of the transport industry. Subcontracting is standard in major retail contractors. When the ARA asked member companies if their principal transport contractor/s used subcontractors 13 replied yes and only four said no. Those retailers relying on transport contractors who used subcontractors had a clear expectation that the principal contractor would manage their subcontractors and meet their legal obligations to the subcontractors (oral submission, Bill Healey, ARA). At the same time, subcontracting was seen to effect not only price (ie the shaving of margins down the line) but also, according to the ARA, meant that the delivery schedule had been set for the owner/driver by the contractor that engaged them not the retailer. The Inquiry received other evidence that extensive use of subcontracting had a critical impact on tendering and the low freight rates paid to some operators and this issue is examined in some depth below. At the same time, the ARA emphasised that its members sought to enter into contracts in a due and proper way. While recognising that subcontracting-

based shaving of prices might affect the overall freight rate the ARA also referred to these as outcomes of essentially commercial arrangements:

I would have thought that there are problems given the nature of the industry that because of the existence of essentially cost shifting down the chain, because we make the point there that the drivers are price takers, you are in some cases getting prices put up that… in a different set of circumstances may not be sustainable. Now the question is in a commercial contracting relationship how far do you go in saying to someone your quoting too low. That's the real challenge here and …its happening across the board… (oral submission, Bill Healey, ARA)

The ARA stressed that while price was not the only determinant of retailer's decisions to proceed too far down the path of pre-empting price negotiations would be to undermine if not invalidate the tendering process (oral submission, Bill Healey). Further, it argued that in some circumstances the tender price may be acceptable but it was 'cuts' taken by various levels of subcontractor that was the problem. It saw the structure of the industry as the critical factor to be addressed if it was shown such arrangements were compromising safety.

Large retailers, like most other large transport users, have a set of key performance indicators (including price, delivery time, quality/damage to freight/loss ratios, legal compliance and reliability) that are incorporated into both the tender process and final contract. Once a contract has started these indicators are monitored on a regular or ongoing basis, not just periodically (oral submission, Bill Healey). The ARA (oral submission, Bill Healey) went on to state that the requirement to meet all legal obligations, including safety, was either stated in general terms or implied, rather than being specified in detail. Retailers incorporate specific termination provisions for some contracts (such as the supply clothing via outworkers) but the Mr Healey was unaware if similar provisions applied to road transport contracts. In relation to the inclusion of more specific safety-related requirements in contracts with transport companies the ARA noted that some companies (notably Coles Myer) had already moved in this direction. The Coles Myer Logistics Code of Conduct, which now forms part of all transport contracts with the company, includes a requirement that the contractor have a fatigue management plan in place and ensure that all drivers, agents and subcontractors comply with this. Amongst some other retailers there were concerns as to what should be included in these contracts and the legal ramifications of this. This appeared to reflect concerns examined in the previous section of this Report as well as very practical issues. Mr Healey (oral submission) stated:

That's the other issue. It's one thing to put it in there [safety clauses into contracts], and its another thing to say how you're going to know.

The Inquiry has given careful consideration to the latter issue. Mr Healey (oral submission) stated that he believed ARA members would look at model clauses such as that based on the fatigue management provision in Coles Logistics Code of Conduct mentioned earlier (the issue of raising customer awareness is addressed later in the Report).

Addressing the issue of client responsibility and industry tendering practices the NSW Road Transport Association (written submission, pages 15-16) argued:

It is fair to say that, up until recently the client or end user of the freight service paid little or no attention to the task of actually moving the freight. It was the freight carrier's task to get the freight from (a) to (b) and the less the client was involved the better. What's more, it was simpler for a client to get the cheapest price for the job by knowing nothing of the task

This attitude pervaded the industry, and was instrumental in the fierce undercutting of rates that occurred in the past, and some say, still occurs today. There is, gladly a lessening of this

attitude in the more responsible carriers, but there is still a need for this to be completely eliminated…

In the past, tendering processes made no mention of how or when a freight task was to be done. The task was to move (x) tonnes of freight from (a) to (b) when required to do so by the client. No request was made for information on: how long the driver would drive; how many drivers would be used; what was to happen if departure was delayed through no fault of the transport company; what was to happen at arrival at destination etc.

The Association argued that questions of how and when tasks were to be accomplished as well as protocols for dealing with delays and unloading were essential to the tendering process if safety was not to be sacrificed. The Report fully endorses this viewpoint. Indeed, it finds it disturbing that these measures were not standard practice over many years. The Report also notes the tenor of the Association's examination of the issue is to indicate that both clients and transport operators shared responsibility for this state of affairs.

The Inquiry received submissions pointing to other practices as contributing to under-bidding on contracts. For example, it was suggested that larger transport operators with diverse activities or warehousing facilities were able to reduce rates by cross-subsidising the freight transport task from other activities. Larger companies can also exploit their economies of scale, flexibility and ability to acquire remunerative return or offset loads, even if at much reduced rates. Such practices have been identified in other countries such as the USA (see Belzer, 2000) and no doubt they occur here although, evidence available to the Inquiry implied these practices, while they may affect some large contracts, were not the principle basis for under-bidding. Of course it may also be suggested that what is labelled under-bidding is simply some operators securing contracts at lower rates but for which their greater efficiency still enables them to make a reasonable return. The Inquiry has no doubt some contracts have changed hands on this basis. However, evidence presented later in this section indicates the transport industry is experiencing low margins and that this also matches the findings of a number of overseas studies and official inquiries.

In addition to the issue of rates, the Inquiry received numerous submissions relating to other pressures being placed on transport operators when tendering for work, especially client demands in relation to scheduling. Even large operators believe these demands had intensified in recent years. For example, a manager of one national company (oral submission) observed:

The tendering process, from my experience in the last ten years, is that it has not changed a whole lot at all in that a majority of large companies [clients] do go out to tender every couple of years. However, it is very much and becoming more so that with those particular clients, large customers, tend to dictate what they want from go to whoa, not just on transit times, rating terms, on insurance, on everything…. They do leave the rates side open for your submission. But they make it very clear in their tender documents that they want you to pick up 'x' amount of freight on a given day and then deliver it within so many days or a given time to state 'x', 'y' and 'z'. So it's very dictatorial.

As noted earlier, concern with existing tendering practices that resulted in under-bidding on contracts/squeezed margins and unrealistic scheduling that undermined safety emanated from a wide range of parties, many with no obvious self-interest in promoting this assessment. Typical was the response of the leading NSW motorist organisation, the NRMA.

NRMA does not have documented information on any of these issues…However, anecdotal evidence suggests that industry practices regarding tendering, pricing and scheduling must impact on the level of safety of trucks doing long hauls. Scheduling is a key issue in this regard as an unrealistic schedule can only be achieved by a driver speeding, skipping required rest breaks, or both.

NRMA is extremely concerned that some companies may be winning tenders for a specific job with schedules which are patently unrealistic, given the regulations governing the industry. This practice puts enormous pressure on drivers to break regulations and endanger themselves and other road users. Such practices would contravene relevant occupational health and safety regulations which companies have a responsibility and a legal requirement to follow.

NRMA believes that all transport companies should practice responsible management in regard to tendering, pricing and scheduling. This responsibility extends to clients who should not make unrealistic demands of transport companies to offer inducements for quicker delivery of goods. Strategies need to be identified to encourage companies to act responsibly in this area (written submission NRMA p3).

As was noted in Section Two of the Report, there is a widespread (almost universal) view amongst those making submissions to the Inquiry that subcontracting of freight tasks is increasing and indeed already a pervasive practice within the industry. This impression is confirmed by a survey undertaken for the NRTC (oral submission, Barry Moore). The Inquiry heard evidence that subcontracting was being used enable larger operators to retain/secure business at lower freight rates than would be possible if they directly employed their own drivers in the task. Small fleets with lower labour costs (achieved through reduced pay and entitlement levels, discouraging workers' compensation claims and direct award evasion) or owner/drivers (where award entitlements don't apply) are able to undertake the task. It was common, the Inquiry was told, for trucks and/or trailers still carry the major fleet logos so to the casual observer, a member of the public or even a customer, it appears that an employed driver of the major fleet has undertaken the task.

The view that most large transport operators made extensive use of subcontractors was confirmed by larger company representatives, with one for example estimating that only around 10% of the company's drivers were directly employed. Another large company, which 15 years ago engaged no owner/drivers, was now moving to meet a goal of only 20% directly employed drivers. A few large transport companies did not fit this pattern, but they tended to be engaged in more specialised transport activities or where the for-hire fleet was an adjunct to a vertically integrated operation that accounted for the bulk of that company's trucking operations. In one such company about 20% of its fleet consisted of owner/drivers (these drivers owned the prime mover while the company owned the trailer, making them indistinguishable from company trucks, and worked exclusively for the company). Overall, available evidence indicates that most large operators now rely heavily on subcontractors. Reflecting this trend, the NSW branch of the TWU (oral submission, Tony Sheldon, state secretary) estimated that it had lost 500 members from the long distance sector over the past seven years. These membership losses overwhelmingly came from larger companies where union membership levels have traditionally been far higher than the long distance sector as whole (ie including medium and small operators and owner/drivers). The union believed most of these jobs had been lost due to subletting contracts to other fleets rather than to owner/drivers. This view was consistent with the pattern of subcontracting described by others making submissions to the Inquiry. The centrality of subcontracting to industry operations finds further support in the viability problems experienced by one large operator that tried to continue competing using directly employed drivers (at award rates and conditions). In a sense large transport companies are transforming into companies that manage freight movements (via arranging contracts, proving warehousing and logistical support) rather than being directly involved in shipping freight. The tendency of these operators to re-badge themselves as 'logistics companies' rather than as 'transport companies' has more meaning than most other road users would guess.

When asked why subcontractors were cheaper one manager (oral submission) simply replied:

…because they don't value their labour, all their labour component…he might pay himself a wage but that wage wont be any where near what an employed driver would get from a [names major company] etc. Generally, the interstate subcontractors won't value the part of their wage that's tacked on at the beginning or start of the trip.

In other words, the cost savings of subcontracting are achieved not through the greater efficiency of subcontractors but rather their willingness to accept an effectively lower rate (either directly or when calculated according to total working time). These savings derive not only from lower direct labour costs but also indirect costs such as workers' compensation and superannuation. The NSW branch of the TWU (oral submission) claimed that larger transport operators were increasingly requiring subcontractors to incorporate thereby removing their need to provide workers' compensation, superannuation and payroll tax. While this allegation requires further investigation it seems clear that subcontractors are seen to provide greater flexibility (getting drivers when and as you need them) as well as advantages in terms of on-costs (such as workers' compensation). As noted in an earlier section, to the extent that owner/drivers take out inadequate accident insurance (to fill the void of workers' compensation) or superannuation they are likely to make greater calls on the social security system. This might be viewed as a hidden community subsidy to the freight rates regime in place although its size is unknown. These issues should be of interest to the Productivity Commission given its interest in competitive neutrality.

The subletting of tasks may occur at more than one stage. That is, the subcontractor sublets all or some of the task at a lower price to another subcontractor, who may sublet and so on, resulting in a process known in the building industry as 'pyramid subcontracting'. Where large contracts are involved, the principal contractor may sublet the freight task to a number of subcontractors (and some of these may not be small in the case of very large contracts), some of whom sublet and so on. The situation is also complicated by the fact that a number of large companies have subsidiaries, which can and are also brought into the subcontracting process. The Inquiry was told that three or four 'steps' of subcontracting (ie from client to those driving the truck) was not unusual. Instances were also cited where the chain had become so elongated that a subcontractor would arrive to pick a load without being fully aware of precisely who they were working for (usually where an owner/driver or small subcontractor obtained work at short notice via minor subcontractors). The Inquiry was unable to determine how elaborate (ie how many steps) the subcontracting networks had become (and this almost certainly varies widely) but the rationale for using them at least was clear. However, in explaining the reasons for this pattern of dependency it is important to recognise that subcontractors are not a homogenous group, ranging from single truck operators through small fleet operators and even including sizable fleets. Many single truck operators are country-based and given high unemployment in many of these areas have, in the eyes of some within the industry, bought themselves a job but do not understand their costs. However, even if they do understand their costs they are generally in a very week bargaining position. The situation may be less acute for small fleets with a number of reliable clients, able to undertake a greater diversity of tasks and able to sublet tasks at profit. Nevertheless, the difference is one of degree at best and the Inquiry found it difficult if not impossible to disentangle poor business skills and weak bargaining power in relation to dealing with larger transport operators and clients.

However many steps are involved, evidence to this Inquiry made it clear that subcontracting was playing an increasingly pivotal role in the tendering process, with larger companies securing contracts at reduced rates and then farming out the work to subcontractors at even lower rates. Once initiated, competitive pressures from this type of tendering/subcontracting process are likely to cause other operators to imitate this tactic, reinforcing the effect.

One apparent change in the tendering process that further advantaged larger companies in securing contracts was their growing use of professional consultants to prepare tender documents. This may be in part a response to a better-prepared and more demanding approach to the tendering process on the part of clients (using their specialist staff or their own consultants). Representatives of larger companies suggested that in addition to quality and reliability considerations, clients were placing intense pressure on them to reduce rates by making this a condition of securing the contract. This view was supported by oral submissions from some employees of larger firms (including firms not directly interviewed by the Inquiry) who were responsible for supervising subcontractors or owner/drivers who they argued had been brought in recent years as a direct response to reduced freight rates. A depot-based worker for a major transport company described the situation where the owner/drivers he was 'responsible for' were brought in following a freight rate cut, and associated backloading from regional centres, three years earlier. It should be noted that the Inquiry learnt from other sources that the contract involved, a large one held over many years, had been re-negotiated after the client initiated a new tendering round. In this round, the transport company's tender (based on its own costings) were undercut by other operators opting for thinner margins but the client offered the contract to the original company if it could match the price of the other bidders. The employee's contact with the drivers and familiarity with their tasks (having previously worked as an employee driver and having supervised others) indicated the subcontractors were working anything up to 20-hour days and exceeding their legal limits on a regular basis. The employee claimed the transport company, which had a good reputation with regard to safety, took a number of its own prime movers out of service. The contract, for which these owner/drivers performed the transport tasks, was between the transport company and a major retailer (oral submission, depot worker for national transport company, Sydney). This case is typical of others presented to the Inquiry.

As will be noted below, smaller operators often tended to see the process more in terms of larger companies taking contracts/securing work, sometimes at the expense of smaller operators, by offering a lower rate and subletting the work. Evidence presented below tends to support the former interpretation (ie large companies using subcontractors in response to dropping freight rates) though this doesn't exclude the latter. Either way, owner/drivers and small operators were in a dependent and weak bargaining position in relation to the freight forwarder or large transport company that secured the freight task.

The company's that tender the freight set the rate for the owner/driver and small companies who do not have the time or the expertise to win freight on their own. Anyone can set up and quote the freight [rate] with no regard or experience with the truck costs for owner/drivers, as due to a lack of buying power pay more than larger companies for everything. The quote a cheap rate, take their percentage off the top, and offer the job to the owner/driver. Some companies quote good rates and take large percentages. If the company wins the job but cannot move the freight via a subcontractor, it rings another company who may have a subcontractor and offers the job to them at a better rate than they would pay their owner /driver. These kinds of tactics, along with the perpetual term of backloading rates, which discriminate against people with north bound freight as the south bound freight is usually considered backloading. No negotiation of rates of rates even when costs are rising, for example fuel…There are a lot of small fleets that are actually just glorified owner/drivers. They've got say three or four, maybe five trucks and they've got very little work of their own. They're doing the same as us, they're going through other companies (oral submission, wife/business partner of owner/driver, based in a town north west of Brisbane)

It might be suggested that owner/drivers might be better off tendering for subcontract work from small fleets than large fleets/freight forwarders because they would be better able to negotiate the rate. A number of owner/drivers made the point that it was more possible to negotiate a rate with smaller transport operators than large operators. However, they also noted that this had to be balanced against their experience of having more problem getting

payment by small operators or as the wife of one operator put it 'being between the devil and the deep blue sea'. Such experiences are consistent with the presumption that many small fleets would be in a marginal financial situation themselves, including those subcontracting to larger firms. In other words, owner/drivers may feel locked into a tendering process where an option of securing a better rate has to be balanced against concerns over security or promptness of payment. The Inquiry heard a number of submissions that would suggest delaying payment to owner/drivers is used deliberately for the financial advantage it secures (similar problems have been periodically raised in the construction industry and indeed were the subject of recent measures by the NSW government).

As already noted, the subcontracting did not involve just owner/drivers but also medium and small fleets, although as the last quote highlights the distinction between an owner/driver and a small fleet is a blurred one. Even in fleets of more than five trucks driving by the owner on a regular basis is common. Nevertheless, the prevailing view amongst operators and industry observers was that subcontracting to small fleets accounted for much of the growth in subcontracting rather than subcontracting single vehicle owner/drivers (whose numbers were seen to be stagnant at best and more probably declining). Of course, with pyramid subcontracting both small fleets, including owner/drivers as well as single vehicle owner/drivers can all be involved in a single contractual arrangement to move freight. Whatever the precise configuration of subcontracting, the rationale for the process was made abundantly clear to the Inquiry on numerous occasions.

Most of the national freight forwarders are using subcontractors to do their tasks. So they wouldn't necessarily have, employ company employees…I think its part of the problem…under the duty of care thing you undertake to do that job. Well as far as they're concerned you're starting fresh to do their task. They haven't given any consideration to what you might have done prior to doing their task… As I understand chain of responsibility it goes right down the line, but does it?(oral submission, small fleet operator, Southern NSW).

In addition to the pervasiveness of subcontracting, this quote highlights that dis-articulation of commercial arrangements via subcontracting is associated with an analogous fracturing of OHS responsibility (although OHS legislation clearly provides that the prime contractor cannot outsource their responsibility and chain of responsibility legislation purports to have a similar effect). This is a common problem with subcontracting/outsourcing that has been identified in a number of industries (Quinlan et al, 2001:335-414). It also highlights the need for both management and regulatory systems to more closely intermesh the relationship between each trip undertaken in the road transport industry. Both these issues will be examined in the next Section of this Report.

For small operators the under-bidding via subcontracting process involved either the offer of work at very marginal rates or the loss of existing contracts to lower-price tenders. In pointing to this process, a number of small operators described the implications for them, with the following being a typical response:

That happened in Newcastle a while back. We used to get nearly a $3 premium for doing wire and a major company took it over and dropped it back to what you used to get for steel. Well they're two totally different jobs. The steel you can get two deliveries on, on wire you get five deliveries on, and five deliveries around Brisbane from one side to the other takes a lot [of time] *especially when you take half a ton and get $30 for it… Yeah the pressure does come down, they [larger companies] go in to get the work, they get the work and then they just go to the subcontractor [and say] "Well we've got the work alright but we're only paying this amount per tonne* (oral submission, small fleet operator, Northern NSW).

There can be little doubt that greater use of owner/drivers and small fleets as part of pyramid subcontracting chains is liable to have serious consequences for safety performance. Referring

to one fleet where a company owned around half the prime movers and the rest were subcontracted owner/drivers an insurance company observed:

The company owned vehicles performed quite well while the owner/driver trucks had very poor experience, which deteriorated over time. Eventually it got to the point where the fleet was unprofitable overall (written submission, John Vallance MMI).

As already implied, in many instances independent owner/drivers (ie those not working exclusively for a large fleet or major client on a fixed term basis) rely on either transport companies or loading agents for freight tasks. The tendering for these contracts is often very informal or on a 'take it or leave it' basis. For example, to obtain a return load an owner/driver will contact and pay a fee of $30 or more to a loading agent. A number of drivers and union officials complained of practices such as 'double manifesting' (sometimes involving kick-backs to managers in transport companies) where the manifest is made out to the loading agent rather than the driver. This meant payment was made to the loading agent not the owner/driver and drivers complained they received only part of the stated price (a Victorian driver referred to receiving $660 out of $880). The drivers making these submissions claimed that 'double manifesting' was widespread. Evidence was too limited to draw conclusions on this. A number of other problems were raised in relation to loading agents in the course of the Inquiry.

Even leaving practices such as ‘double manifesting’ aside, owner/drivers and small operators in particular complained about what they saw as arbitrary deductions from the freight rate imposed by customers for administration, pallets and insurance cover (imposed even when the operator has their own cover). The wife/partner of one owner/driver stated (oral submission):

Some of companies find a way of saying your minimum rate is $2000 but then they add an administration fee of $50, pallet fee…so it actually works out that you get $200 less than you first started out…

It was argued that there was virtually no negotiation and while the operator could refuse the contract this was difficult when most others accepted such deductions. This partner referred to cases where a two percent deduction was made for insurance but the company refused to provide evidence of the policy. In its oral submission, the ATA confirmed these practices occurred. The practice of making arbitrary or non-negotiated deductions from freight rates would seem to be an abuse of the tendering process. The Inquiry was unable to determine the precise extent of these practices but every indication was that they were not uncommon. The Inquiry will have more to say on this issue in its recommendations.

In at least some jurisdictions government attitudes to tendering for their own contracts do little to encourage a responsible attitude to safety on the part of transport companies because safety expenditure by them becomes a cost disadvantage rather than advantage in the tendering process. The Victorian Road Transport Association (written submission) observed:

Too few companies make the commitment that some of our members do. A Large National Corporation spends many millions of dollars annually on training, vehicle acquisition and maintenance, driver safety and fatigue management education and amenities, and employee awareness programs. They also make substantial staff commitment to National and State industry forums and associations. Another member spends in excess of $150,000 annually on motel rooms for drivers. It also has satellite tracking devices installed in addition to on board monitoring devices. Driver caution notices for speeding are prepared prior to the driver arriving at the depot at the completion of his [sic] journey. This type of technology cost millions of dollars and yet the company gets no preference in obtaining government contracts and must compete against the less safety conscious when tendering for other jobs.

Overall, the evidence presented to the Inquiry indicates that while transport operators have not always been adept in their tendering processes but even large companies, where this is generally not the case, have felt obliged to reduce rates and accommodate to increasingly stringent customer requirements. If large companies, with their considerable logistical advantages and expertise, have felt this pressure it seems rather unrealistic to presume that smaller operators, let alone owner/drivers, would have the bargaining power to enter more favourable tenders, quite the reverse. There can be little if any doubt that pressure on rates has encouraged increased use of subcontracting (to small fleets as much as if not more so than to single truck owner/drivers) as a means of cutting labour costs. Further, once initiated subcontracting places further price pressures on those freight tasks which have not already adopted this approach (unless there are strong grounds for not using subcontractors). With some conspicuous exceptions due to special circumstances, large fleets are now typically composed of a small core of employee drivers and a majority of subcontractors. Even ignoring the issue of wage rates, the move to subcontracts appears to have often involved accepting illegal practices (excess working hours etc).

It may be argued that unrealistic tendering practices (ie taking jobs which operators know are not really viable or remunerative according to their own costings) of transport companies rather than pressure from clients is to blame. Clients, it might be suggested, are simply doing the best deal they can. As noted earlier, those within the industry prepared to admit that the industry itself has a responsibility for unrealistic tenders, are not hard to find. At the same time, two points need to be made. First, the pressure that clients are able to exert on such an atomistic and competitive industry is made clear in other evidence presented in this Report (see below). Second, the present structure of the industry with a large number of small operators, easy entry/over-capacity, high labour cost component of operating expenses, and intense competition amongst even large firms makes it extremely unlikely that the industry can overcome these problems entirely through its own devices. For every firm that takes the hard decision to reject uneconomic contracts there are always others prepared to take the work. In this circumstance, the professional operator will always be under threat unless they can find new sources of efficiency (relatively difficult given the fairly standardised technology) or clients for whom cost considerations are not the overriding concern (fairly rare as far as this Inquiry can determine). The outcomes of tendering processes, and the weak position of transport operators is made clear when we turn to the issue of freight rates and economic viability.

3.2.3 Methods of pricing, freight rates and economic viability

They're atrocious…my husband's a driver…he works on a percentage ratio. He's quite happy with his company, he has no trouble with driving after his time's up or anything…he works on a percentage so we get an idea of what they get paid and the pallet rate is absolutely atrocious. It's got to be lifted and then half the problems are going to be helped. Truck companies aren't going to have to push their drivers as hard if they are making enough money per load. I think its $30 a pallet of groceries from Brisbane to Port Macquarie, once you take out your truck payment, your fuel, your tyres, it doesn't add up (wife of truck driver working for small fleet, Northern NSW).

The Inquiry received a number of submissions and other evidence suggesting that freight rates were either too low or being squeezed (in relation to margins) to the point where they were conducive to unsafe practices in relation to driving hours/number of trips, speeding, drug use and vehicle maintenance.

Pressure on freight rates is a long-term feature of the industry. A study undertaken by the Bureau of Transport and Communications Economics in 1988 indicated there had been a 33% reduction in real freight rates pertaining to the Sydney/Melbourne route in the decade from 1978 (cited in Hensher and Battellino, 1990:545). Of course, freight rates must be evaluated

not only in relation to direct costs (fuel, labour etc) but also with regard to increased truck load capacity and efficiency, improvements in roads and the like (Hensher and Battellino 1990:545).

The Inquiry was fortunate that detailed research had been undertaken in this area by Mr Dean Croke, now employed by the insurer MMI/Allianz Australia but formerly involved in a family trucking company and having undertaken work for the ATA. In 1998 Mr Croke had prepared a report on the economic viability of the road transport industry and both this report and updated information submitted to the House of Representatives Standing Committee on Communications, Transport and the Arts Inquiry into Fatigue in Transportation were made available to this Inquiry. In addition to providing his submission and report to this (ie the MAA) Inquiry, Mr Croke attended a hearing of the Inquiry in Canberra to give further evidence on these issues. It should be noted that the Report of the House of Representatives Standing Committee Inquiry placed some reliance on the evidence of Mr Croke. Further, his report was well known to a number of parties to this Inquiry and at no point was the veracity of his analysis questioned.

In his written submission Croke noted that an array of factors affected the viability of businesses in road transport, including some within the control of the business (internal issues) as well as others outside its control (external factors). Internal factors included:

Operations
- Lengthy loading and unloading times affecting utilisation and driver fatigue.
- Drivers failing to record actual loading and unloading time in logbooks.
- Insufficient fatigue management and scheduling practices in place.

Financial
- Owners not adjusting business strategies to cope with low inflation.
- High levels of gearing creating a comfort zone in the early years of equipment life cycles where running costs are lowest, which increase substantially with age.
- Return on capital employed not adequately factored into current rates.
- Investment in safety not adequately factored into current rates.
- Many operators (large and small) not having a good understanding of their operating costs and contributing to the industries rate problem through unsustainable rate setting strategies.
- Owner-Driver and Owner-Operator salaries grossly under-estimated in fixed costs.
- Unrealistic return on investment expectations by major freight forwarders and industry customers creating downward pressure on sub-contract rates.
- Lack of financial reporting through real time profit & loss reports and strategic planning within small business in road transport.
- Duplication of carriers liability insurance imposed on sub contractors (up to 2.5% of agreed rate) by prime contractors.

Technological
- Industry's willingness to pass on the majority of gains to customers (without productivity gains) resulting from such factors as increased vehicle capacity, improved technology, and increased access for higher capacity vehicles.

Management
- Small business unwillingness to adequately budget for marketing costs and accountancy fees.
- Industry's lack of knowledge of the OH&S Act and reported unsafe work practices and work environments resulting in a disproportionate number of injuries and deaths.
- The increasing trend towards self regulation through accreditation schemes and the attachment of regulatory benefits as a reward for effort principle.
- Competitive pressures from an oversupply of vehicles causing downward movement in rates.

- Industry's failure to market itself effectively to overcome the "derived demand" syndrome (demand for transport is derived from external transactions).
- Sales and Marketing strategies of major companies where the focus is on quantity of revenue, rather than quality creating a price driven market.

External issues, on the other hand, included

Government
- Inadequate spending on road infrastructure to meet the growing demands of road transport.
- Inconsistent application of road transport law and regulations to both conventional operators and Government business enterprises.
- Inconsistent state government legislation and lack of national uniformity.

Regulation
- National Road Transport Commission (NRTC) proposed legislation on increased mass limits for heavy vehicles.
- Impending legislation from the NRTC to address Operator and Customer Due Diligence and Duty of Care in the workplace.
- Inconsistent transport regulations between states.
- Ineffective management of driving hours under current regulations.

Customers
- Industry customer's lack of understanding on the freight task performed by operators and willingness to take advantage of an over supplied market to drive down rates.

Business Costs
- Excessive levels of indirect taxation on operators, for example, diesel fuel excise.
- Operator costs continually rising disproportionately to revenue (freight rates).
- Industry based initiatives to improve safety and fatigue management, which impose a short-term cost to operators but deliver a longer-term benefit.
- Reform of the Australian Taxation system and impending implications of a GST on industry.

Competition
- Increasing competition from other transport modes such as sea (high-speed and traditional coastal shipping) and rail.
- Preferential treatment for those operators who have made the effort to obtain accreditation and adopt minimum standards (written submission, Dean Croke, pages 5-6).

Croke argued this was not an exhaustive list and that a number of the listed factors interacted to affect overall viability (this Report has already noted evidence of how several factors may interact to affect safety such as the link between loading/unloading delays, self-scheduling and longer hours of work). Rejecting the financial/accounting methods upon which the industry has relied on in the past (see above) Croke based his assessment of viability on a value-added approach which looked at the relationship between the cost of capital and return on the assets used in the business. Under this approach, a business is regarded as viable when its Return on Net Operating Assets (RONA) is equal to, or greater than that business's Weighted Average Cost of Capital (WACC). These are calculated from the financial statements of a business, and from other market related statistical data from sources such as the Australian Stock Exchange.

In terms of the transport industry, Croke argued that most operators are acutely aware of the consequences of not meeting debt commitments (a recall on their loan, often causing the failure of the business. At the same time, Croke argued that most operators were unaware of the consequences of their business not generating a reasonable return on equity funds (including vehicle replacement costs). In these situations, the over medium and long-term the real value of equity could fall to the point where banks refuse further finance because the

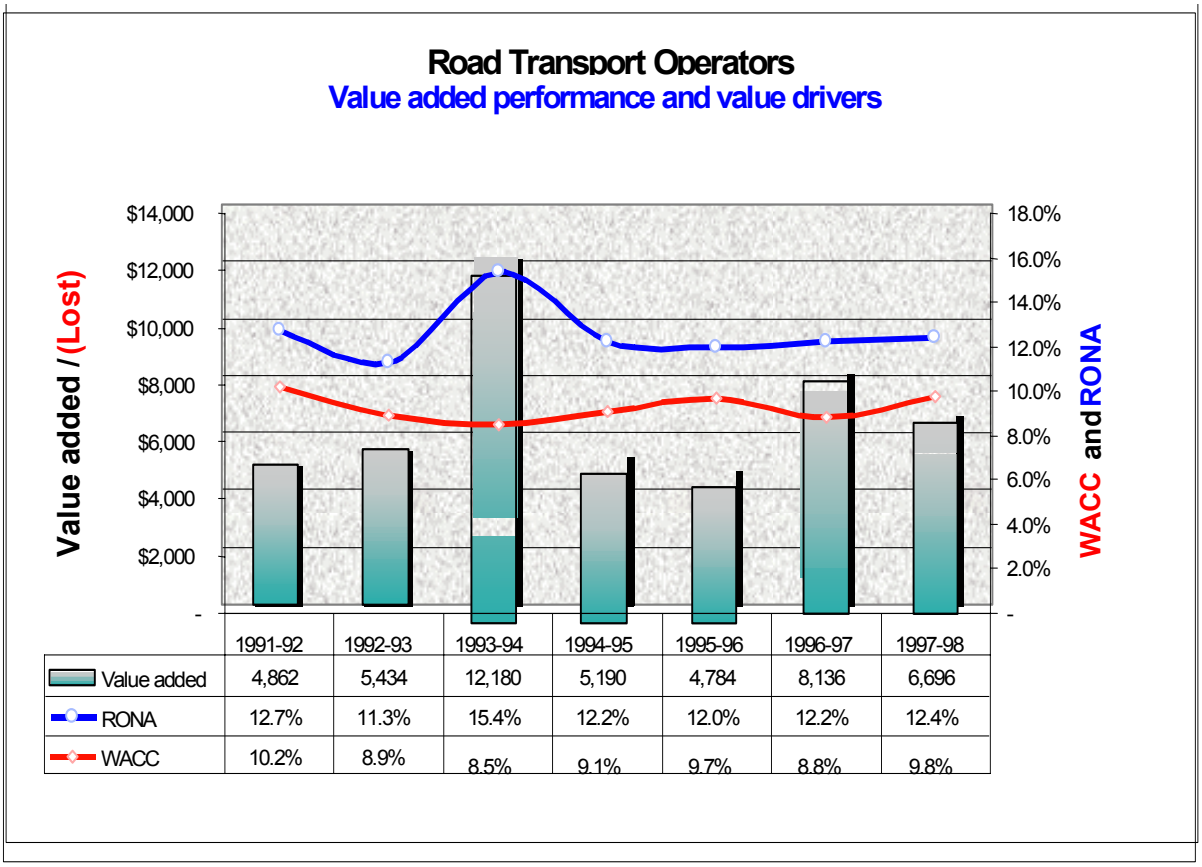
business has become too highly geared, with bankruptcy a likely outcome. In the course of the Inquiry a number of witnesses described events that were entirely consistent with this scenario of a transport business where returns were so low in relation to commitments that it progressively exhausted its initial capital/equity base leading to bankruptcy and/or exit from the industry.

Relying on analysis prepared by Rick Copping (from accounting firm Pannell Kerr Forster) of 23,000 transport companies from the Australian Bureau of Statistics 1998 Business Performance Survey, Croke used value-adding performance to assess the viability of road transport operators. The survey included 23 large companies with more than 200 employees (average number of employees 1,076) with the remainder classified as small to medium with an average employment size of 4.1 employees. The small to medium category was a very diverse one. It included single truck owner/drivers, the majority of whom work as subcontractors to large fleets, have little control over freight rates and are generally seen as at most risk in terms of maintaining a viable operation. Croke argued many medium sized operators, on the other hand, provide specialised freight services such as bulk liquid freight, dangerous goods freight, over-dimensional freight and local freight services. By offering specialised services they were likely to exercise more control over freight rates they charged and would on the basis of this be expected to be more profitable.

In the small to medium category, the data indicated (see Table 19) that the average operator had been trading viably in all years from 1992-93 through to 1997-98. Viability dropped significantly in 1994-95, improved in 1996-97 and decreased slightly in 1997-98. According to Croke (written submission, page 9-10), average operators asset turnover fell from 2.8 times in 1993-94 to 2.0 times in 1997-98 (ie fewer sales generated for each dollar invested). Operator balance sheets also indicated a significant increase in the proportion of equity capital being used (from 47% of total capital employed in 1991-92 to 61% in 1997-98). Croke argues that, in combination, the two trends indicate that operators were not including an adequate rate of return on equity capital in their freight rates (ie the common costing problem referred to earlier). Croke (written submission, page 10) adds:

Many operators have commented that they cannot cut costs any further without compromising the safety of their operations. This suggests that, unless freight rates can be improved, more and more operators will have their viability threatened which in turn may induce operators to further compromise the quality of their operations.

Table 19: Return on Net Assets (RONA) by small and medium sized business units (SME's) with fewer than 200 employees

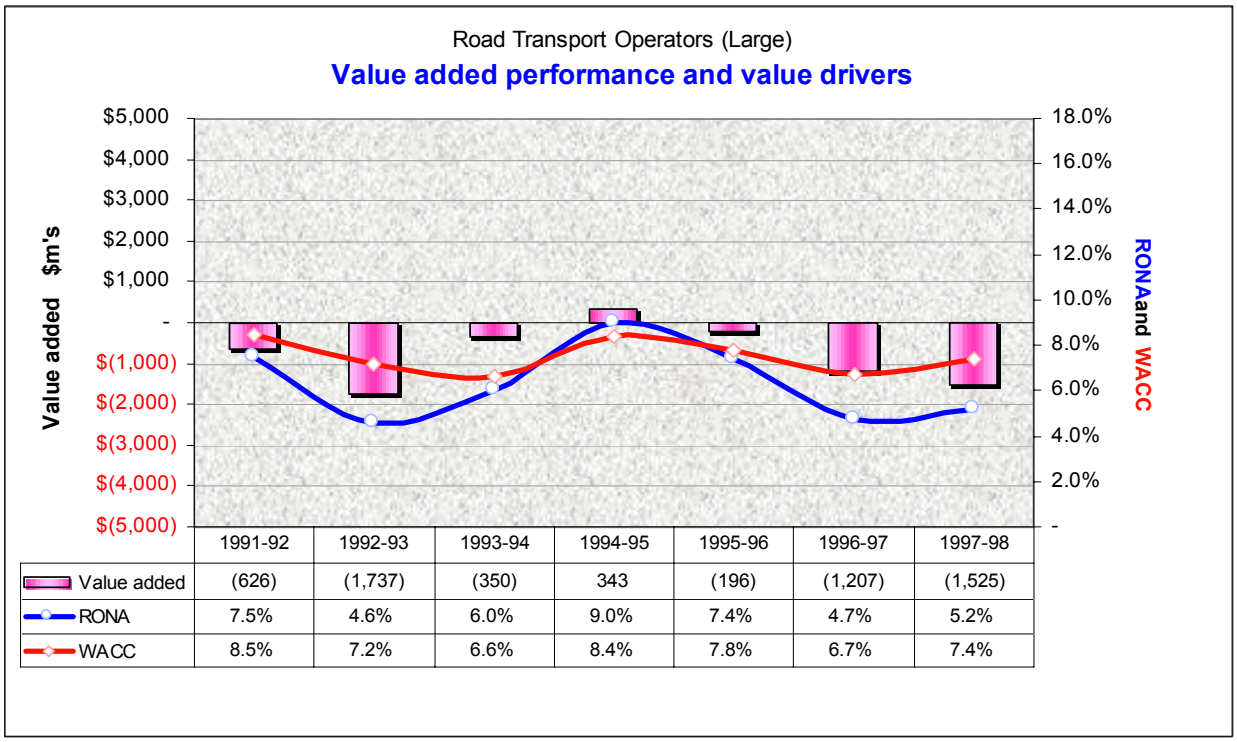


	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
Value added	4,862	5,434	12,180	5,190	4,784	8,136	6,696
RONA	12.7%	11.3%	15.4%	12.2%	12.0%	12.2%	12.4%
WACC	10.2%	8.9%	8.5%	9.1%	9.7%	8.8%	9.8%

Source: Written submission Dean Croke/MMI page 10 Table 4

Turning to the experience of large firms Croke found the average large operator has produced a RONA greater than WACC in only one year between 1991-92 and 1997-98 (ie 1994-95 See Table 20). Croke noted a steady deterioration in average operator performance in the three years after 1994-95 despite a slight improvement in RONA from 4.7% in 1996-97 to 5.2% in in 1997-98). Average operator's profitability (NOP/Sales) fell from a seven year high of 7.4% in 1994-95 down to 4.5% in 1997-98. Increases to labour costs (35% of sales in 1994-95 to 38% of sales in 1997-98) and costs of sales largely drove the decline (58% in 1994-95 to 61% in 1997-98). Croke argued both trends could indicate that operators were not fully passing on their increasing costs to customers, and that the squeeze on operating margins could underlie relatively low rates these operators paid their subcontractors. Like small and medium operators, large operators significantly increased the proportion of equity capital used to finance their net operating assets, from 27% of total capital employed in 1991-92 to 57% (or more than double) in 1997-98.

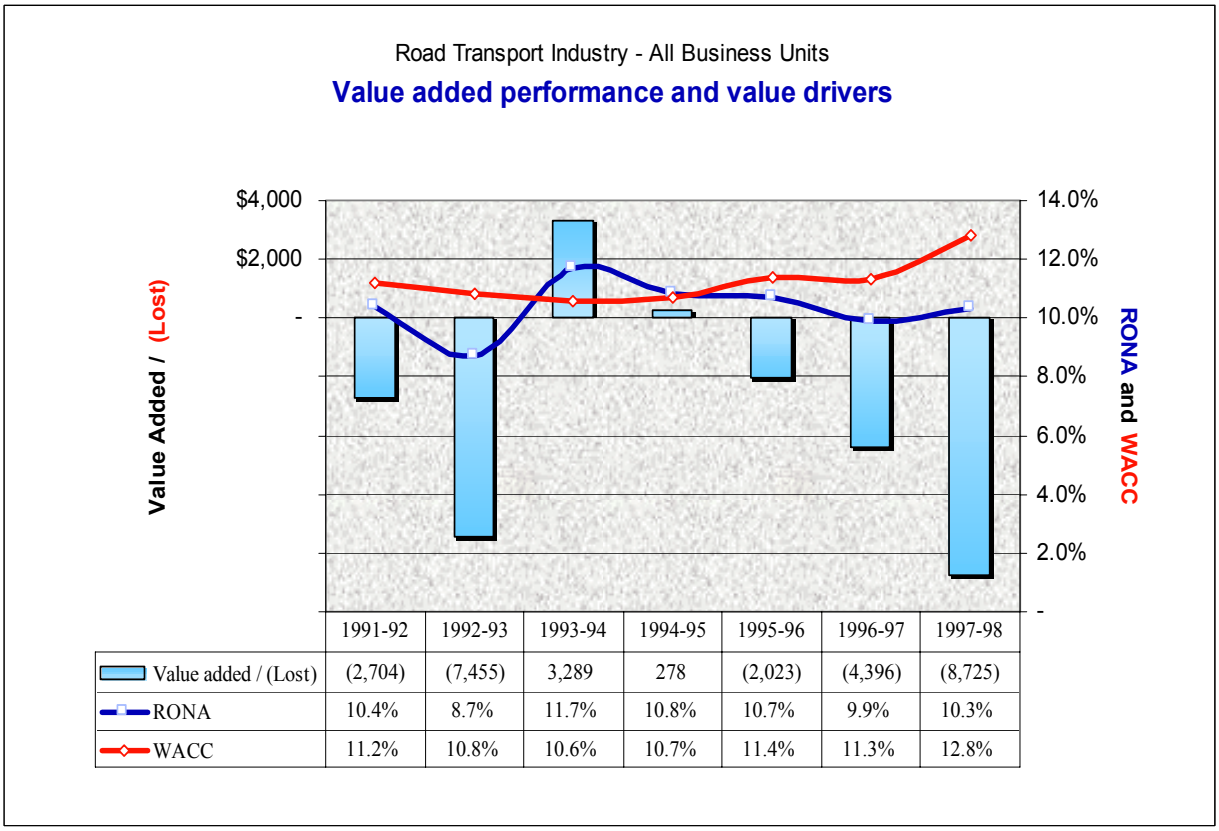
Table 20: Return on Net Assets (RONA) in large businesses with more than 200 employees



	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
Value added	(626)	(1,737)	(350)	343	(196)	(1,207)	(1,525)
RONA	7.5%	4.6%	6.0%	9.0%	7.4%	4.7%	5.2%
WACC	8.5%	7.2%	6.6%	8.4%	7.8%	6.7%	7.4%

Source: Written submission Dean Croke/MMI page 11, Table 5.

Table 21: Return on Net Assets (RONA) for all transport companies combined



	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
Value added / (Lost)	(2,704)	(7,455)	3,289	278	(2,023)	(4,396)	(8,725)
RONA	10.4%	8.7%	11.7%	10.8%	10.7%	9.9%	10.3%
WACC	11.2%	10.8%	10.6%	10.7%	11.4%	11.3%	12.8%

Source: Written submission Dean Croke/MMI page 12, Table 6.

When Croke combined the small/medium and large operator segments, trends were amplified. In 1994-95 average operators seem to have broken even, with RONA of 10.8% just exceeding a WACC of 10.7%. However, by 1997-98 average operators RONA had fallen slightly to 10% while the weighted average cost of capital (WACC) was 12.8%. Croke's analysis indicated many operators were unviable in each of the three years from 1995-96 to 1997-98.

The Croke study contains a number of disturbing results. It suggests that freight rates are not sufficient to make many operators economically viable and that many firms have been eating into their reserves of equity capital – a trend that cannot continue indefinitely. The viability problem has traditionally associated with small operators and especially owner/drivers who have limited business skills and access to new technology (including more efficient rigs) and economies of scale. However, the Croke study indicates that even large firms are experiencing difficulty

Croke (page 13) argues:

…all operators are increasingly under pressure to remain viable as evidenced by the long-term performance of this industry, increasing number of bankruptcies and exits from the industry. The added pressure of shareholder expectations to achieve adequate returns for the large public companies, in a market where we are experiencing increasing costs and decreasing rates (both customer and sub contract rates), also impacts on all operators who sub contract to these public companies (who determine rates for the sub contractor).

The added problem of a growing shortage of professional drivers in Australia (not dissimilar to America), will remain an obstacle for many small operators looking to increase vehicle utilisation beyond the legal limits of one driver. This problem is also causing concern for large companies who need to maintain high levels of customer service from an often-transient work force.

In addition to this evidence Croke undertook 28 detailed case studies of particular operations and truck configurations on specific routes (eg Livestock 4x2 single trailer eastern states owner/driver; owner/driver flat top trailer Sydney/Adelaide; small fleet B-Double Sydney/Brisbane; and small fleet single trailer Sydney/Melbourne). While the calculations for each configuration lead to an array of results, the general trend was one of declining viability over the decade, with many businesses trading at below break-even points and operators who subcontracted being at most risk. Croke (1998 Road Transport Viability Report, page 52) argues that, given conservative assumptions about fuel prices, repair and maintenance costs, the actual position of businesses could be 'much worse' than the case study costing models indicate. Irrespective of this, his conclusion was that the only way to sustain viability at reduced rates of return was to extract more revenue from each truck by completing more trips over a set period (such as an additional return Sydney/Melbourne trip every two weeks). The only way to do this without appreciably adding to labour costs is for the same driver to complete these trips (ie to work longer).

During his oral submission to the Inquiry Croke repeatedly emphasised the connection between low freight rates/tight margins/low viability and safety:

The two don't work together. You don't get a safe truck and a good viable business running really cheap (Dean Croke, oral submission 2 August 2000, Canberra).

Croke's assessment that in a climate where margins are being squeezed operators and drivers will need to work harder and longer was supported by numerous submissions to the Inquiry, with owner/drivers, for example, referring to the need to do more trips in a week. A number

of managers of transport companies also drew a connection between low rates/poor business practices and safety, with one (oral submission) observing:

If a transport employer is working in a low rate regime or he is a poor quality operator then he'll have poor quality equipment, he won't maintain it very well and he'll have a high driver turnover because he will ultimately only attract, excuse the expression, the dregs of the industry. The quality drivers tend to gravitate to bigger companies where they are driving quality equipment, regularly maintained, where there's a regime of vehicle turnover and they're respected in what they do.

The Inquiry has spent some space summarising Dean Croke's study because it addressed issues central to the terms of reference and it is by far the most detailed and representative study of viability undertaken in the industry. The methods and findings are accepted throughout the industry and, as far as the Inquiry can determine, by other interested parties. Further, survey evidence made available to this Inquiry and referred to elsewhere support Croke's analysis. Other evidence considered by the Inquiry also supports his interpretation. For example, a confidential report prepared by financial products company on the prospects for selling investment products to those in the road transport industry found their financial circumstances was already so marginal marketing news product was out of the question. Qualitative research carried out as part of the report revealed a familiar refrain of complaints from operators about excessive competition, undercutting, declining and inadequate freight rates, with typical responses being:

Undercutting by large industries…they will get a subcontractor to do it cheaper…stipulating that they will get someone to do it cheaper…its hard to make money. The rates for actual cartage has fallen…our costs have gone up, what's left in the middle is barely enough to exist on.

The Inquiry was also able to examine the financial records of a number of owner/drivers that were, again, consistent with Croke's assessment of operators carrying a serious burden of debt and financial commitments relative to their income (in several cases the operator had indeed gone bankrupt).

This disparity between the increase of costs and the increase in rates means that the transport companies are not making a proper or appropriate return on their capital investment.

Evidence supplied to the Inquiry from other sources overwhelmingly confirmed Croke's analysis (though it is worth noting that Croke's rigorous work hardly needed support). For example, statistics provided by TransEco Line Haul for cost and rate index for the period from September 1988 to June 2000 indicated that there had not been viable rate increases over this period of time. The productivity increase since June 1991 has been 20.57% and the cost increase in the same period has been 34.71%. Over the same period the rate increase has been 13.78%. There is a difference therefore of 20.93% between the increase of costs and the increase of rates over this period, which is nine years. Some of the smaller transport and haulage companies may well have found that the disparity over the same period has been considerably greater.

Figures prepared for an owner/driver publication by Jerry Brown-Sarra also paint a pessimistic picture. Brown-Sarra did a comparison of the rises in costs and rates since 1971. These indicated that the cost of truck increased over this period by at least 1100% (eg: a Kenworth truck in 1971 cost $29,000.00 but today costs $342,000.00) while the cost of triaxle trailer increased by at least 750% (eg: a tri-axle trailer in 1971 cost $8,000.00 but today costs $60,000.00). The cost of tyres increased by 618% (eg: cost of a tyre in 1971 was $110.00 but now costs $680.00) and fuel costs rose by 1,220% (the cost reaching 86c/litre compared to a

cost in 1971 of 35c/litre). Measured on a per kilometer rate, the cost of wages increased over this period by 400% (in 1971 it was 6c/kilometre whereas in 2000 it was 24c/kilometre). However when the rates were examined the increases were vastly less than the above percentages for costs. Per tonne forwarding leg rates increased only by 250%. The situation was worse for backloading as per tonne backloading rates increased by only 44%. Full load forward leg rates increased by 300% and full load backloading rates increased by only 72%. Even factoring in improvements in productivity (due to larger and more efficient trucks etc) the disparity between percentages cost increases and rate increases underlines the reason for many of the present problems in the industry.

Another indication that the industry is operating at a level of unsustainable costs or insufficient margins is the increasing level of bankruptcies, takeovers and closures amongst operators. 'Churning' amongst small operators is a long-term feature of the industry but, as noted elsewhere, the Inquiry was surprised at the number of long term owner/drivers and small operators who felt their viability was in question. What is perhaps even more noteworthy over the past decade has been considerable instability even amongst the small number of very large operators. A number of submissions from both industry representatives and insurers pointed to the number of large operators that had exited the industry over the past decade as indicative of inadequate returns (though conceding other factors have also played a part). Large companies experiencing financial difficulties in this period included TNT (a postwar success story prior to this that had grown from local operator to transnational transport giant). Another, Universal Transport Operations (UTO) was formed in the early 1990s out of the MIM transport business before failing (resulting in the auctioning of trucks that profoundly affected the new truck sales market at the time). Other large companies to experience some measure of financial difficulty included Mayne Nickless, Brambles and most recently Finemores. Some firms sold all or part of their transport divisions to concentrate on more profitable areas. In recent years Toll Express has emerged by far the largest remaining player, growing in part through a process of acquisition (a mooted purchase of Finemores did not proceed). While poor financial judgements and a climate of low inflation undoubtedly played a part in some of the instability just described, low rates of return and the just-in-time demands of customers have also been seen as crucial by informed industry observers. The rapid 'churning' of transport operators in a climate of intense competition and low returns has also been observed in the USA (oral submission, Professor Michael Belzer).

3.2.3.1 *Freight Rates, Income Insecurity and Payment Systems for Drivers*

In the road transport industry there is a close association between freight rates and the level and type of payments made to truck drivers. The association operates at a number of levels. First, and most obviously, for owner/drivers the freight rate represent their 'pay' or at least the gross return that will determine earnings once operating and fixed costs (such as truck finance repayments) are deducted. Second, given the high labour cost component in road transport and since owner/drivers directly compete with operators using employee drivers for available work if owner drivers are prepared to accept rates that effectively translate into below award wages this places pressure on companies paying award wages. Evidence given to this Inquiry would indicate that owner/drivers being paid less than an award rates (and sometimes well below) is a common if not pervasive feature of the long distance road transport industry. Faced with such competition, operators with employee drivers must seek to reduce costs/improve efficiency (by offering a better service in terms of timeliness and responsiveness to customer needs, although it should be noted this may translate to greater scheduling and other pressure on drivers). While this may conceivably occur without recourse to direct labour costs, the absence of economies of scale, the centrality of price to customers and a lack of business skills amongst many operators do not encourage such a response. Rather, the two most obvious responses are to either fail to pay award rates to employee drivers or replace them with subcontractors. In practice, award evasion is easier for small to medium regionally based operators but relatively harder for large operators who are more

likely to be unionised and receive regular attention from union officials. Thus, for large firms subcontracting out so as to place the labour cost cutting at a distance represents a practical option. During the course of its investigation the Inquiry heard evidence that award evasion was widespread and larger operators were making increased used of subcontracting to small fleets/owner-drivers rather than their own employee drivers to maintain returns in the context of reduced freight rates (after accounting for operating costs). It was also suggested that large operators used subcontracting so as to put in otherwise unsustainable bids to secure contracts. These two scenarios for why large operators are using subcontractors are not mutually exclusive but indeed may be seen as mutually reinforcing.

The Inquiry received a range of submissions on the connection between payment systems/income security and safety.

The TWU argued that recent changes to the federal industrial relations system had permitted payment arrangements that not only encouraged unsafe driving practices and were incompatible with the standards laid down in road transport and OHS legislation. In the federal jurisdiction this applied to both certified agreements and Australian Workplace Agreements (AWAs). In its submission, the Victorian/Tasmanian branch argued that:

…an analysis of agreements in the long distance sector reveals that real earnings are trending down but are camouflaged within the agreement by increasing the average speed of trucks. To compensate for lower earnings drivers are forced to work longer and harder with the result being that fatigued drivers are sharing the road with all other drivers and are therefore a potential threat to the public interest. The level of risk associated with this increases, depending on the nature of the load. The federal Transport Workers' (Long Distance Drivers) Award which was made in consideration of the public interest, is constructed using 75 kph as the average speed. One recent non union agreement which was certified was based on an average speed of greater than 90 kph. An analysis of that agreement reveals on three typical journeys the following, Melbourne/Sydney/Melbourne, a round trip, the company offered for that trip the rate of $422.32 all inclusive. When we broke that down, the company provides for 18.3 hours for driving that journey…1,732 kilometres involved in the journey divided by the 18.3 hours comes to an average speed of 94.64 kph. It would be impossible to average that speed with speed limits in towns (oral submission, Nathan Niven, TWU Victorian/Tasmanian Branch).

The Branch argued that an average speed of just over 82 kph was achievable (without breaching speeding laws) giving a total journey time of just over 21 hours. At the company's own rate, the payment to the driver for this trip time would $472 or $50 more than the rate calculated by the company. For a Melbourne/Brisbane/Melbourne trip the company calculated a trip time of 37.3 hours driving over the distance of 3,362 kilometres that would average out at 91.3 kph and the company offered $797.70. Allowing for an average speed of 82 kph (still below the award benchmark), the TWU calculated that the trip would take 41 hours and would cost, at the company rate, $863 – almost a $70 saving. The union submitted that the proliferation of trip rates and 'scams' designed to lower earnings was contributing to fatigue. The TWU stressed that unlike awards, certified agreements and AWAs did not have to meet a public interest test in order to be certified. Attempts by the union to lodge an appeal against certification of this agreement under the no-disadvantage test were unsuccessful.

The TWU had submitted similar evidence in relation to both certified agreements and AWAs to the federal inquiry into managing fatigue in transport. The federal inquiry also heard evidence of the removal of a number of fatigue protection provisions (eg rostering and accommodation) and the extension longer work arrangements such as 12 hour shifts. Considering all these matters, the final report of the inquiry expressed concern that neither the parties nor the Australian Industrial Relations Commission (AIRC) or the Employment

Advocate had given sufficient consideration to the fatigue and safety implications of these changes. The Committee observed decisions:

...are being made on the basis of perceived productivity: assumptions which value asset utilisation more highly than risks to personal and public safety (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:102)

The Committee recommended that the Employment Advocate provide information on fatigue including government codes and regulations pertaining to the transport industry to the parties to AWAs and that the AIRC provide similar information to parties to enterprise agreements. It also recommended that the federal Minister for Transport, in consultation with the Minister for Workplace Relations, should review AWAs and enterprise agreements applying to transport industry to ensure they comply with OHS laws and accepted fatigue management principles (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:103).

Like the Committee, this Inquiry views evidence of agreements that effectively undermine both existing OHS legislation and road safety regulations with great concern. It is hardly likely that the community would find it credible that a government or its agency would permit the making of legally binding agreements that are likely to place workers and other road users at increased risk. The full extent of these practices is unknown but the existence of any such agreements is extremely disturbing.

Further, as with the federal inquiry, this Inquiry received evidence that trip or per kilometre-based payment systems encouraged unsafe driving practices, especially given loading delays and the absence of demurrage. A Victorian driver noted (oral submission) that a truck might be held up for some hours behind local delivery vehicles (where hourly pay rates applied). It could then lose further time by being obliged to travel across town to secure a return load:

And of course there's nothing in the logbook in relation to driving [across town] or work other than driving. Its always rest time because we're getting paid to do our interstate trip. We're not getting paid to unload or load so we're not going to put it into our logbook and restrict our money in the earnings area, which is doing the trip.

A further issue not considered by the federal fatigue inquiry but raised in this Inquiry was the non-payment of award rates and entitlements to long distance truck drivers. It was suggested that one way some employers sought to remain competitive was to evade paying full award entitlements to their drivers.

Survey evidence

Submissions about the connection between payment levels and payment systems and safety were supported by evidence of two surveys of long distance drivers already mentioned in this Report, namely the national survey of driver fatigue conducted by Williamson et al (2000) and the OHS survey conducted for this Inquiry. Both surveys found that performance/task-based payment systems were pervasive, with the historical comparison available to the Williamson et al (2000) study indicating that these payment arrangements were growing over time. The increasing use of payment-by-results regimes is consistent with Croke's assessment of an industry where many operators are finding it more difficult to survive and are consequently trying to extract a greater return from drivers, including employee drivers.

The national fatigue survey (n=1007) by Williamson et al (2000) found that most drivers (68.3% were paid per trip according to the kilometres travelled or the weight or volume of freight delivered while 14% were paid a flat load rate). Around 17% of drivers negotiated pay rates for each load while 43% of the remainder had ongoing contracts for some or all of their

loads. In terms of payment level, 63.2% of drivers were paid the award rate or better but 17.1% were receiving less than the award. A further 19.1% were unaware of how their pay compared to the award (previous research would suggest many of these drivers would be receiving rates below the award).

The survey of OHS experiences amongst 300 drivers commissioned for this Report found that 52.7% of drivers were paid on a kilometre/trip basis (6.7% with a bonus) while for 17% payment varied with each job (a figure remarkably similar to the Williamson et al study). As can be seen from Table 22, direct payment according to award rates was only made to a minority of drivers (16.3%), even amongst those working for large fleets. Drivers working in large fleets were more commonly paid by the km/trip rate (68.2%) or award rate (24.7%), compared with those working in small fleets (51% and 21.1% respectively). Small fleet drivers were sometimes paid on a partial piece rates basis (e.g. % of earnings); so in terms of payment mechanisms these drivers are mid-way between owner/drivers and large fleet wage systems. In contrast, owner/drivers are rarely paid by the km/trip rate (23.2%) or by the award rate (5%), and in fully 38.4% of their driving contracts the rates vary from job to job. As can be seen in Table 22, 16.7% of 'other" drivers, 12.5% of those in small fleets, but only 5.9% of large fleet drivers were paid under some form of 'km/trip rate plus bonus' (no owner/drivers interviewed were paid this way). In an unknown number of instances, these bonus payment allowances may have included money for meals etc en-route. That is, bonus allowances are not always calculated on the basis of production. As the Survey report notes 'With the wisdom of hindsight, it may have been appropriate to have included assessment of the extent to which allowances formed part of wages packages or contributed to an incentive payment bonus for long-distance interstate trips.' There may be a softening of the employment contracts of many small fleet employee drivers. Over time the basis by which small fleet driver payments and entitlements are calculated are moving towards those enshrined in owner/driver contract conditions.

Table 22 (Table 8 in Appendix 3): Basis by which payment is calculated in survey of 300 drivers

	Owner/drives (n=99)	*small fleet drivers (n=104)*	*Large fleet drivers (n=85)*	*Other (n=12)*	*% of 300 drivers*
Award rate	5%	21.1%	24.7%	8.3%	16.3%
by the km or trip	23.2%	51%	68.2%	33.3%	46%
Km/trip rate plus bonus	-	12.5%	5.9%	16.7%	6.7%
Varies by job	38.4%	7.7%	4.7%	8.3%	17%
Other	29.3%	10.6%	7.1%	33.3%	16.7%
no answer	5%	1.9%	1.1%	8.3%	3%

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

Overall, there appears to be substantial agreement in the results for both surveys, especially when account is taken of differences in sample composition (by employment status) and the precise categories of payment methods used. Turning to the relationship of payment methods and levels and safety each study will be discussed in turn.

The national fatigue study by Williamson et al (2000:35) found drivers under a payment by results system were almost twice as likely to report having experienced fatigue on at least half of their trips than drivers paid on a time/hourly basis (32.5% as compared to 18.7%. The 1991 survey yielded a similar ratio although the overall level of reported fatigue was higher). In the context of other evidence, the impact of payment systems on fatigue management assumes critical importance in the overall conclusions of the Williamson et al study. After dealing with

other sources of scheduling pressure such as freight forwarder and customer pressure (discussed elsewhere in this Report) Williamson et al (2000:111) state:

The remuneration system is another pressure on drivers that appears from the survey, to influence drivers' work schedules. Both surveys reveal that payment by results was the predominant method of remuneration for all drivers, even company employees, and this form of payment increased markedly across the period of the two surveys… Analysis of the relationship between payment type and experience of fatigue demonstrated that drivers who were paid in a payment-by-results mode were more likely to report fatigue as a substantial or major personal problem and to experience fatigue more often than drivers paid under other payment regimes. In addition, a significant percentage of drivers volunteered the strategy of standardising or regulating minimum payment rates as a way of managing fatigue.

The pressures exerted by the payment by results system can also be seen in the influences on drivers to break the working hours regulations. The factors that distinguish drivers who frequently break the working hours regulations from those who do not are related to organisation of work such as the need to do enough trips to earn a living and to get in early to get the next load rather than personal reasons. This is further evidence that the way drivers are remunerated clearly has an adverse effect on the ability to manage fatigue well. This is another factor that should be examined further if fatigue management is to be truly achieved in this industry.

A number of the points made by Williamson et al clearly parallel earlier research by Hensher and colleagues, as well as the submission of Dean Croke discussed above. At a later point in summarising their findings, Williamson et al (2000:113) note that since drivers are remunerated according to the amount of work (more accurately the amount of driving) they do, attempts to limit their access to work are unlikely to be favoured. In other words, so long as drivers are paid on a basis that encourages, if not requires, long hours of work direct attempts to restrict driving hours are liable to be resisted. As Williamson et al also note, a significant number of drivers believe that a more standardised or regulated minimum payment system would be a more effective means of managing fatigue by obviating the need to work long hours. Consistent with this interpretation, a recent study of long distance truck drivers in the USA (Belzer et al 2000) discussed below provides some evidence that higher payment levels can lead to a measurable improvement in safety. The connection between payment systems and excessive hours was also raised by a number of submissions to the Inquiry, not simply by the TWU but also by insurers, some of those involved in enforcement and even several operators (or their representatives).

The driver survey commissioned for this Report found evidence on the relationship between payment systems/income security and both chronic injuries and driver health/psychological distress that reinforces the conclusions drawn by Williams et al (2000). Each of these areas will be addressed in turn.

As noted in Section 2, the Survey of 300 drivers showed that chronic injury is a major problem for long distance truck drivers. The distribution of chronic injury (Table 13) was compared against the payment method (Table 22) for each truck driver (see Table 23). Table 23 indicates that owner/drivers with chronic injuries were disproportionately paid by 'varies by job' and 'other' payment methods. Drivers in small fleets with a chronic injury were usually paid on the basis of a km or trip rate, and drivers in large fleets with a chronic injury were usually paid on the basis of a km or trip rate or the award rate. That is, the group with the highest incidence of chronic injury (owner/drivers) were also those with the most variable payment levels. While the precise causal links between variable payment and chronic injury require further investigation the general association is clear.

Table 23 (Table 16 in Appendix 3):
Chronic work-related injuries of 300 drivers, compared against payment method

	Award rate	*Km or trip*	*km/trip + bonus*	*varies by job*	*Other*
% of all drivers paid this way (table 8)	16.3%	46%	6.7%	17%	16.7%
% of owner/driver with chronic injury	7.3%	25.4%	-	43.6%	34.5%
% of small fleet drivers with chronic injury	20%	78%	8%	8%	18%
% of large fleet drivers with chronic injury	39.1%	76%	4.3%	-	10.9%
% of other employment status drivers with chronic injury	33.3%	33.3%	-	-	100%

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

Returning to the issue of psychological distress as measured by the GHQ, it will be recalled that in Section 2 of the Report the Driver Survey revealed high average scores amongst drivers generally, but especially amongst owner/drivers and those driving on the Hume Highway. In the Survey (Appendix 3) all drivers with a GHQ of 14 or above were separated out for close scrutiny to identify any distinctive features. The score of 14 or more was selected because it has previously been identified as a level at which ethical researcher should caution an interviewee about their current health status as they are at extreme risk. The examination of very high GHQ scores was conducted to identify whether these workers had any shared characteristics that might help explain these outcomes. In all, 47 drivers scored 14 or above; this was 15.7% of the interviewed population of 300 truck drivers. Of these 47 high-scorers, 21 were owner/drivers, 13 worked in small fleets, 12 in large fleets, and 1 had an 'other' employment status. That is, owner/drivers were markedly over-represented in the very high GHQ score group. Four potentially important variables were separated out for comparison against the 47 high GHQ scoring truck drivers (hours worked per week, comments about illicit drug use, age, and highway on which driver was working). Of these only the latter emerged as a significant variable (see Table 24). In other words, there was a clear association between high GHQ scores and work on the Hume Highway.

Table 24 (Table 31 in Appendix 3)
Highway on which drivers with a GHQ score of 14 or above were working

Highway	*GHQ score 14 or above*	*All drivers*
Hume	40.4%	26.3%
Newell	12.8%	19.7%
Pacific	14.9%	17%
New England	17%	14%
Sturt	2.1%	9.7%
Great Western & Mitchell	8.5%	7%
Greater Sydney	4.2%	6.3%

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

The Survey sought to tease out influences on high GHQ score Hume Highway owner/drivers by comparing their responses to other owner/drivers. In particular, the Survey analysed owner/driver responses in relation to qualitative indicators of economic stress that had emerged as the most commonly cited safety problem (based on responses to the question 'list the three biggest problems in your job at present'). Three core sources of financial stress were identified (not ranked). First, were costs of running a vehicle such as fuel, registration and insurance cover etc. The second source of economic stress was low freight rates and the GST (the survey was conducted prior to the GST and as indicated earlier there was a close connection between the GST and freight rates). The third and final source of stress was slow payments or nil payments from customers. Added together these three economic stressors were the biggest safety issue cited by the interviewed truck drivers.

Table 25 (Table 33 in Appendix 3)
Frequency of economic stress comments by employment status and high GHQ scores

	owner/drivers on Hume Highway	*All other owner/drivers*	*owner/drivers as a whole*	*% of 300 drivers*
fuel, registration, insurance etc costs	85.7%	50%	62.6%	26.3%
freight rates, GST, financial pressures	68.6%	17.2%	35.3%	21.3%
slow payments or nil payments	28.6%	15.6%	20.2%	7.7%
GHQ scores	13.1	10.5	11.5	10.3

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

While, as the Survey notes, analysing the association between qualitative indicators of economic pressure and GHQ scores is rather like comparing 'apples and oranges', the patterns are clear and overwhelming (see Table 25). **The subgroup of drivers who had the highest GHQ scores were the same group who most frequently volunteered statements about intense financial pressures in the industry, and repeatedly named specific cost factors and other causes of their strained economic circumstances. These findings also reinforce the association between economic viability and safety raised earlier in this section of the report.**

Finally, the Driver Survey also examined the relationship between the GHQ scores of all drivers (ie not just those with scores of 14 or more) and payment methods to test the hypothesis that those paid under variable (rather than standard) systems would be under greater stress (see Table 26).

Table 26 (Table 34 in Appendix 3):
Comparison of payment system against GHQ scores

	Owner-drivers	*Small fleet*	*Large fleet*	*'other' drivers*	*all 300 interviewed drivers*
award rate	7.4	8.6	10.9	8	9.4
by the km or trip	11.5	10.5	9.7	5.7	10.2
km/trip rate plus bonus	-	9.3	8.5	5	8.7
varies by job	11.7	11.2	9.5	15	11.5
Other	11.7	8.3	10.8	5.5	10.3

Source: *Motor Accidents Authority Truck Driver Survey* in Appendix 3 of this Report

Table 26 indicates that the lowest GHQ scores were recorded amongst those drivers with the most secure income, namely those paid by the km/trip rate with a bonus (not to be confused with a simple kilometre trip rate) or by the award rate. The highest scores were recorded amongst groups of drivers with a more variable/less secure income, namely those whose payment varied by the job and by owner/drivers paid by 'other' means or on a km/trip rate (which may be different to the rate paid to employee drivers). **In sum, just as low freight rates, increasing vehicle running costs, and slow payments are intimately connected, variable payment methods (and therefore uncertain) income levels also contributed to stress.**

Conclusion

Insecure income and output based payment is a pervasive feature of the long haul trucking industry. If anything, the practice has become more widespread as operators have sought to 'squeeze' more from drivers in their efforts to offset low margins, themselves a product of intense competition and consequently low freight rates. While this may simply be seen as a sign of efficiency it also has serious consequences for safety. The evidence available to this Inquiry, including several substantial surveys, clearly demonstrate that insecure income and output-based payment systems pose a serious threat to safety in the long haul trucking industry. At one level, these are not startling findings. The connection has been more than obliquely alluded to by inquests into a number of tragic smashes involving articulated trucks such as Cowper and Blanchetown. The finding is also consistent with a number of overseas studies of truck drivers, both long haul and short haul. For example, in a recent US study (Hanowski et al, 1998:39) of short haul drivers nominated payment by the load as significantly increasing 'time stress' and argued it had such a negative effect on safety that it should be outlawed.

Payment by the load or the kilometre is popular with transport firms because it enables them to maximise the output of drivers. It also has support amongst some (though by no means all) drivers, including owner/drivers because it enables them to meet identified gross income targets and boost otherwise low earnings. However, in both cases the result is working under pressure and working very long hours (often exceeding legal limits – work practices that endanger the health and safety of not only drivers but other road users. While payment systems are usually seen as a matter for employers and workers where they have serious effects on OHS and public safety the community has a right to intervene.

The Inquiry finds that the use of kilometre and other output-based payment systems has serious consequences for safety in the long haul trucking industry and urgent measures should be taken to address this issue.

3.2.3.2 *Client/consignor pressure or poor business practices as the source of low freight rates*

Lots of people will tell you price is secondary and we all know that's bull-shit (oral submission, manager in large transport company)

To the extent that low freight rates compromise safety it is important to try and identify the causes or origins of this. One possibility is that it is due to pressure from clients and consignors on a very competitive and atomistic industry. Some load owners, such as BHP and the major retailers to name but the most obvious, are large organisations with considerable commercial clout. While there are some large transport companies the six largest still only account for around 20% of the total road freight task, and there are literally thousands of small firms and owner/drivers. Further, it might be argued that these smaller operators are in more direct competition with large transport companies than is the case between small and large retailers or small and large manufacturers. Several submissions claimed that large vertically integrated organisations in retailing, metal products and other areas might be cross

subsidizing their own transport activities in order to drive down freight rates more generally but the Inquiry was unable to investigate this allegation.

Aside from the client pressure/competition argument, it could also be argued that the squeeze on freight rates originates from poor business practices, especially on the part of small operators who accept less than remunerative rates. Quite a number of submissions to the Inquiry referred to this problem, although by no means the number that raised the client/competition problem.

These two reasons (ie client pressure/competition and poor business practice) are not mutually exclusive, especially if the second (ie poor business skills) is viewed as exacerbating the first (ie client pressure to reduce rates).

Some organisations, such as NRMA (written submission), pointed to both problems, although the degree of emphasis placed on each varied. The Australian Trucking Association (ATA), for example, argued:

The trucking industry by nature could be described as 'price takers' rather than 'price makers'. To this end, it is imperative that the industry has the availability to receive training in regard to business skills so that they can make informed decisions when costing work. The trucking industry currently employs over 4.5% of the workforce nationally, yet only receives 0.7% of the training budget.

However, there is also a second group that directly impacts on this issue – the customer/consignor sector. Research has proven that the trucking industry only controls approximately 40% of the freight task and that customers and consignors need to be made more aware of their responsibility to the safety element of transport. This can be achieved through education and chain of responsibility principles (written submission, ATA p4).

The Inquiry also received numerous written and oral submissions from individuals with knowledge of particular industries/types of freight or regional transport networks describing the relationships between load owners/clients, consignors, large transport companies, small operators and those receiving loads. Though such submissions need to be treated with some caution (it was impossible to test the veracity of all the claims made), the level of detail given, rather than being a series of sweeping generalisations, lent weight to their credibility.

A common thread in many submissions was the respective bargaining power of the parties from load owners and consignors, large and small transport operators.

Describing the haul of molasses from Queensland to Victoria, one written submission argued major consignors were well aware of safety abuses but were primarily motivated by the savings of lower cost operators. It was also claimed that consignors took the view, that as they did not directly contract with 'offending' operators (typically small operators) they had committed no illegalities - a view that current enforcement practices would do nothing to disabuse. The submission argued that the rates for moving molasses to Victoria were typically a much reduced backloading rate (this is consistent with evidence on backloading practices described elsewhere in the Report). Small operators were in a weak negotiating-position once they had 'geared up', were financially committed and typically made decisions on a cash flow rather than cost recovery basis, exacerbating pressure on rates.

The negotiation by transport management firms (who control the freight) with smaller companies is generally for a given rate using a "take it or leave it basis". The logic applied to the operator is that the transport management firm will ultimately find someone desperate enough to do the work (this is often true)…

Most rates are now quoted on an "all in basis" this means that any problems are born by the transport operator even if it is caused by the freight owner eg waiting time (written submission).

The last point on the "all in basis" of rates, that take no account of cost/time impositions on operators beyond their control, was supported by other evidence presented to the Inquiry and has significant implications for waiting time/loading delay issues examined later in this subsection of the Report.

For its part, the Australian Retailers Association (ARA) saw the compression in freight rates as coming from a combination of poor business practices on the part of owner/drivers, and pressure from transport companies and forwarding argents:

The structure and culture of the long haul trucking industry provides some unique problems and challenges for regulators. The industry includes a large number of small owner operators who possess little commercial acumen and have often entered into significant financial arrangements to purchase their truck.

Transport companies and forwarding agents have substantial control over a limited number of jobs forcing owner-drivers to be "price takers". This may encourage drivers to work excessive hours and breach safety guidelines in order to meet contractual arrangements and earn a reasonable income. This has been exacerbated over the past 12-18 months with increases in fuel costs and the implementation of the Goods and Services Tax (GST).

Evidence to the Inquiry has suggested that current freight rates create safety problems. This presumes that if owner-drivers were paid more then they would not be under pressure to work excessive hours. However, there is a counterview, supported by international experience, that there are significant problems in implementing a minimum freight rate regime as they are often undermined by the owner-drivers as they compete vigorously in order to get the available work. It is therefore unlikely that an agreed minimum rate will ever be agreed to without some form of restrictions on driver entry into the industry. The ARA understands that such restrictions would be resisted by all sections of the industry.

There is also no guarantee that owner-drivers will change their behaviour, even if rates were increased preferring instead to achieve a higher margin. Freight rates will remain low while ever the current culture and structure of the industry remain as it is today.

The ARA therefore believes that greater effort is required to educate owner-drivers in key business principles to equip them with the necessary skills to make sound commercial decisions. The Government should also consider providing financial assistance to help marginal operators leave industry with minimal economic loss (written submission ARA pp7-8).

The ARA's views raise several questions. First, since owner/drivers have been a significant feature of the long distance trucking industry for many years, why has the squeeze on freight rates increased during the 1990s? Second, why suggest transport companies and forwarders are cutting owner/driver margins without asking whether pressure from load owners may be contributing to this process? Apart from the ARA, there was general agreement amongst those making submissions to this inquiry that it was not simply owner/drivers that were "price takers" but the transport industry more generally. Owner/drivers may be the most vulnerable to such pressure but the Inquiry received numerous submissions that medium to large companies were also subject to pressure, and that concerns about safety were simply not part of the equation. Typical were the views of one experienced and very professional medium sized hauler of fresh produce:

Transport contracts are often negotiated on the assumption that the most cost-effective company will get the job. Unfortunately little price is paid for safety. When we were first involved in the Fatigue Management Pilot, we had to inform our customers and advise them of the program and the requirements. Openly stating that we would operate in a safe manner cost us initially by losing some customers to other competitors. Unfortunately some customers did not believe that they should have to pay for the safety of our business. Until this culture changes and a higher price is put on and paid for safety by out customers, health and safety issues will remain, in their eyes, as a low priority. For safety to improve there must be industry viability. Unfortunately so many factors are not taken into the quoted price when negotiations occur. Waiting and unloading times can be many hours, and are not often reflected in the overall cost to do business. While transport operators have become increasingly competitive they have failed to be able to significantly increase freight rates. The massive increase in the price of diesel is one clear example of the difficulties of increasing freight rates (written submission, medium sized Queensland-based operator).

The ARA argument that minimum rates might not prevent owner/drivers engaging in high-risk behaviour needs to be treated with caution. While some drivers may continue these practices even with guaranteed minimum rates it is, in the view of this Inquiry, an over-simplification to suggest that all or even a majority of owner/drivers would respond in this way. Further, consistent with observations by the ARA and other bodies about the cost shifting to owner/drivers, it could be deduced that enforcing minimum rates for owner/drivers may well affect the preferences of both transport companies and clients in relation to using either employed drivers or owner/drivers.

It should be noted in passing that the ARA did not provide further information on international experience on the ineffectiveness of implementing minimum freight rates although other parties to the Inquiry identified difficulties (but not insurmountable ones) in this area. Further, the ARA asserts all sections of the industry would oppose restrictions on driver entry. The issue of entry restrictions or mandated accreditation for both drivers and operators is discussed extensively elsewhere in this Report. It can simply be noted here that there is divided opinion amongst industry associations and operators, although it is fair to say most industry associations prefer voluntary accreditation to operator licensing. While issues of practicality and acceptance cannot be ignored, the extent to which the views of industry should determine what is the most appropriate regulatory regime remains a moot point. At the very least, the views of other key interest groups (such as drivers, the TWU and motorists to state but the most obvious) also need to be given some weight.

3.2.3.3 *Freight rates and the introduction of the GST*

One issue to be raised in terms of the methods of pricing to be raised by many parties and on many occasions was the impact of the goods and service tax or GST. As part of the lead up to its introduction, the federal government indicated that implementing the GST package would by reducing/eliminating other taxes lead to savings in diesel fuel and other business-related costs affecting the road transport industry. Given the government's strong commitment that GST-related cost-savings must be passed on, this created a clear expectation of reduced freight-rates. The expectation was reinforced by the response of some transport companies. Linfox, for example, issued a newsletter to subcontractors (*GST Newsletter No.1*) in June 2000 that stated:

With the introduction of the GST from July 1, the Australian Government has legislated that savings achieved in business, as a result of GST related changes, must be passed on to customers. This means:

- *The savings you achieve must be passed on by Linfox*
- *Linfox must pass on your savings together with our own savings to customers.*

Significant penalties will be incurred by business that do not follow these rules. Based on the analysis work that Linfox has undertaken, these tax related savings will be significant.

The newsletter then went on to list expected savings of 23 cents per litre on vehicles greater than 20t GVM as well as estimated reductions in repairs and tyres of 6% and 9% respectively. While noting that some of these savings might be offset by GST compliance costs, the newsletter noted that Linfox regional managers would be discussing the new rates that would apply from July 1. Tables in the back of the newsletter suggested an overall reduction to major costs (fuel, repairs, tyres) of 8.2% for linehaul B Doubles of more than 20t GVM and 9.2 for linehaul single vehicles of more than 20t GVM.

Another large transport operator, Toll (Express) also issued a *GST Bulletin* to its subcontractors. A copy of the April 20 issue obtained by the Inquiry also offers an indicative set of cost savings on fuel, maintenance etc (with an example given of a $183.17 net rate reduction for a trip between a Melbourne and Brisbane warehouse). Like Linfox, Toll told its subcontractors that it was obliged by Australian Competition and Consumer Commission (ACCC) to pass these savings on to customer and that subcontractors would be obliged to do the same. Toll informed its subcontractors it was in the process of calculating new linehaul rates to take effect from 1 July 2000.

As several hearings occurred around the time of the introduction of the GST it is perhaps not surprising that a number of operators, owner/drivers and small to medium fleets in particular, raised the issue that freight forwarders had been pushing for a reduction in freight rates. Freight forwarders were accused of using the ACCC as a justification, threat or reference point in their efforts to wind back rates. A number of operators responded by pointing to increases in fuel prices, WorkCover premiums and other expenses but others said they felt compelled to accede or at least not 'argue the case' where they were heavily dependent on the freight forwarder or specific customer for work.

It is worth noting in passing, that compliance costs with the GST for small operators such as owner/drivers are not insubstantial. While the GST requirements might assist operators to get a better picture of the actual running costs the issue was whether many already marginal operators could cope with the change let alone exploit this side-benefit. During the course of investigation the view was widely expressed that many small operators would not survive the changeover but drop out of the industry - as occurred to well over 20% of operators when similar tax was introduced in New Zealand.

Not surprisingly, during the course of its investigations the Inquiry heard evidence from both owner/drivers and transport companies that customers had either asked for a reduction in freight rates or had, on the basis of their own calculations, informed the transport provider of the new rates that were to apply after July 1. However, at least in terms of fuel costs, these predicted savings were never realised or more than offset with the price of diesel fuel rising sharply in the 12 month period immediate prior to the GST and continuing to rise after that point. The issue here is not so much whether these predictions were realistic, although given that it is a very competitive industry where firms act as ‘price takers’, there was little need to promote what might prove to be overly optimistic calculations on cost savings and indeed some grounds for caution. The real issue was the additional pressure placed on transport operators by customer expectations of reduced rates at a time when they already believed their thin margins were being squeezed. It also strengthened the already powerful hand of clients to impose even more stringent conditions on transport operators.

As noted already, the immediate problems created by the hike in diesel fuel charges and pressure for rate cuts associated with the GST should be seen in the context of long term trends in the relationship of rates to costs. In short, the GST exacerbated existing problems.

3.2.3.4 *The relationship of freight rates to operating costs*

The issue of inadequate freight rates was raised continuously by owner-drivers with many alleging that a historical trend for rates not to match trends in costs were placing them under unsustainable pressure. Typical responses were:

One of convenors of a protest meeting of drivers held in May in Dubbo stated:

"The main issue that concerns us is the rate of pay for the job done. I first came into the transport industry 35 years ago, at the time were getting 20 POUNDS a ton to go from Adelaide to Sydney, today we only get $60 a ton" (written submission, Robert J Harris 3 May 2000).

Much of the evidence on the risks posed by inadequate freight rates and tight scheduling was of an anecdotal nature. However, what was perhaps remarkable about this was the unanimity of these views and the fact that they were expressed by many groups and organisations that had no obvious vested interest in identifying rates and schedules as critical causal factors.

Community road safety groups also expressed similar views about deadlines. For example, in its written submission, the Highway Safety Action Group of NSW Inc – a body formed by 400 people attending a meeting in Orange in 1992 – stated:

Much of our evidence is anecdotal, gleaned from our years in looking at transport issues across NSW. In its eight-year life the HSAG has received innumerable calls from the wives of heavy vehicle drivers concerned about:

- *The excessive demands placed upon drivers to meet unrealistic deadlines:*
- *Lack of consideration for human capabilities and compliance with driving hours; and*
- *The fact that log books record driving hours only and that time spent loading and unloading is not taken into consideration.* (HSAG, 2000).

3.2.3.5 *Freight rates and owner/drivers*

For owner/drivers freight rates represent not simply a commercial exchange but their income.

The report entitled *Driving Forward* (chapter 6.6) on public vehicle and industrial carriers legislation prepared for the NSW Industrial Relations Minister in 1993 considered arguments that special industrial agreements for contract drivers were warranted on safety grounds. The report identified three possible connections between low rates and safety that might be averted by regulated minimum rates. Namely, regulated rates will eliminate the pressure of low returns causing drivers to drive too long, too far and too fast; that low rates affect the quality of drivers; and that low rates discourage proper maintenance of vehicles (*Driving Forward* p31-32). Each of these arguments was rejected, though entirely on a priori rather than on evidentiary grounds (for contrasting evidence see the Hensher studies above).

Concerning the first argument, *Driving Forward* contends the 'provision of assured or excess returns for contract driving' is 'just as likely to provide incentives for drivers to undertake extra work so as to capture the (elevated) rewards, and so encourage drivers engage in the conduct it is intended to prevent.' While such a response cannot be discounted on the part of some drivers, the overwhelming weight of evidence presented to this Inquiry was that drivers are working harder and longer than they want in order to either meet pressure from their employer or to try and make ends meet. As the evidence of Dean Croke showed, the break-even point for a truck deteriorated over the course of the 1990s such that more trips needed to be undertaken to cover costs. The Inquiry found frequent use of the term 'excess returns' in

Driving Forward in no way matched the almost universal references to the existence of rates which were too low, if not unsustainable, according to informed observers such as insurance companies. Further, the research undertaken by Professor Michael Belzer and colleagues (2000a and 2001) in the second largest trucking company in the USA (JB Hunt) established a strong and unambiguous relationship between payment levels and safety that was confirmed by a cross-sectional study. Belzer found a significant increase in wage rates delivered a substantial improvement in the number of truck crashes being experienced by the firm. It needs to be demonstrated, not presumed, that owner/drivers would respond in a fundamentally different way for *Driving Forward's* interpretation to be sustained.

In relation to the second argument *Driving Forward* (1993:31) contends:

…the judgement by a principal contractor of whether a contract (or any other) driver is safe is itself a matter of skill, and largely independent of the presence or absence of statutory force in the determination of the level of reward for the driver.

Again, we are given no evidence to support this point and the submissions made to this Inquiry as well as other evidence are not, by and large, consistent with the proffered interpretation. It could be equally argued that the general level of reward may affect the pool from which such choices can be made. It should be noted that one of the factors for the improvement in safety in JB Hunt identified by Belzer was that the increased wage rates enabled the company to attract the very best drivers. It is also worth noting that the US road transport industry is characterised by high levels of labour turnover that contribute to safety problems and make it difficult for employers to be selective about drivers. It is arguable that there is a nexus between low wages, high turnover, average driver quality and poor safety. The Inquiry also received evidence that the costs of undertaking additional training discouraged drivers from doing this, especially in the context of low returns. The long haul driver workforce is ageing and, despite the rapid growth of the industry, attracting good quality drivers may prove increasingly difficult in the long term. *Driving Forward* highlights the potential distributional consequences of regulating contract rates. What it fails to consider is that undercutting by owner/drivers creates a level of competition between them and employed drivers that may well affect the health and safety of both. Nor are the distributional effects in relation to other modes of transport discussed. For example, it could be argued that artificially low rates applying in road transport have resulted in a shift of business away from other transport modes with superior safety performance, most notably rail.

In relation to the third argument concerning the impact of contract rates on vehicle maintenance and operating safety *Driving Forward* (p32) argues that such an association based on incremental changes in income is unlikely given the overall volatility of driver incomes due to weather, changes in demand etc. Again, this interpretation simply does not accord with the verbal and written evidence given to this Inquiry about how competition and low rates led to shortcuts in vehicle maintenance, delays in the purchase of tyres etc. The Inquiry was repeatedly given examples of how low returns affected vehicle maintenance decisions by owner/drivers. Without wishing to belabour the point, it is worth providing just two typical statements (oral submissions) by very experienced owner/drivers, the first based in the Hunter Valley and the second in Victoria:

People are bypassing things, where they need tyres replaced they're re-grooving them. You see a lot of trucks on the highway with steel hanging out of the tyres. Instead of heaving their brakes re-lined they're going a bit longer….I lot of these blokes are re-grooving retreads that should be thrown away…I have seen people re-grooving steer tyres…the tyres off the steer of the truck, took them off and had them re-grooved. Could'nt afford to replace them…its highly unsafe, they're the two most important tyres on the truck… You see on the highways, it speaks for itself, the number of old [tyre] cases on the road…if we don't have an enforceable rate structure we are where we are now, we are unsafe, we are unviable.

This whole thing…resolves basically around the rates because whether we like it or not I would be the first one to admit in my 27 years I have taken a hand-full (of drugs) every now and again. I've driven too fast. I've driven too long. I've put too much on. All the things that makes us monsters I can say that I'm guilty of…. Now, the only reasons they're being done is because I need to do them to survive. You take away that need and you'll take away an enormous amount of problems. But, to the same value, if you don't take away that need we're wasting our breath because I for one will continue to break the law, I will continue to drive too fast or I will continue to overload….because I am trying to survive, I am trying to do what I have to do for my wife and my family and my future, what future I've got left. So I see that (rates) as the being the underpinning thing for the whole, entire problem.

While the industry has always had a rogue element prepared to cut corners on safety, the evidence presented to this Inquiry was that there were commercial/viability pressures to do this and it was affecting long-term operators. Such operators demonstrably knew 'something' about survival, and some now feeling pressure to cut corners on safety had eschewed such practices in the past.

3.2.4 Client/consignor requirements as to delivery times, responsibility for driving hours, driver performance and remuneration for drivers

3.2.4.1 *Introduction*

We're in a better position than a lot of people because we own our truck and we're just paying off for our second motor and we've nearly come to the end of that so we can turn around and say no we don't want to do the work. But we have at times been turned round by people who've said to us "if you don't get there by say eight o'clock tomorrow morning you get docked a hundred dollars off your amount." I've just turned around, or my husband has turned around and said "take it off because we don't need that pressure." This is the sort of pressure that the truck owners are getting… (oral submission, wife/business partner of owner/driver, Queensland)

The Inquiry received submissions from a wide range of other parties arguing clients (both load owners and load receivers) and consignors were putting undue pressure on both transport companies and individual drivers in ways that compromised safety. This included submissions from parties with no vested interest in ascribing a particular cause to speeding and other offences. For example, the written submission of the Traffic Services Branch of the NSW Police attributed a rise in the number of speeding infringement notices to the inability of some sections of the heavy vehicle industry to set realistic schedules and attempting to circumvent existing on-road enforcement measures.

The point about client pressure was also made in submissions from government agencies in other jurisdictions such as WA Transport:

Getting clients to be more responsive to the needs of truck drivers is a significant issue. We have spoken to a number of large users of freight services in the State to make them aware of the role they play. We point out there are three issues they face if they require delivery times that compromise safety and the standards in the Code. They are if there is a crash:

- *the actual loss of their freight*
- *a tarnished image*
- *potential for being sued for damages*

There are other things customers' can do to help drivers including managing queues and providing access to facilities. Feedback from operators is that they need some assistance to

explain the position to customers and we will be producing a brochure explaining customer responsibilities that the industry can use to more effectively negotiate with customers.

Already a number of major transport users in the State will only use operators who have a fatigue management system in place (written submission, Lance Poore, Regional Policy Section, WA Transport).

Not all submissions accepted that clients as well as consignors and load receivers placed unreasonable expectations on operators and drivers on a regular or systemic basis. Further, as in other areas the very complexity of the transport supply chain means that it is not always clear for which party the pressure is originating or if the pressure results from commercial pressure, incompetence or favouritism in the awarding of freight tasks. The Inquiry received submissions alleging all three factors played a part and the perception of the key players could be determined very much by where the operator or driver was located (ie as a principal contractor or an owner/driver). In its submission the ARA highlighted a number of these points, including the influence consignors might exert independent of the time frames established by the retailer and the need to educate staff making decisions, especially in the context of chain of responsibility legislation.

The feedback we've had in relation to consignment agents is that quite often the lead time's appropriate but the problem is the consignor or the freight forwarder takes time… They take some commercial decisions as to how they are going to get it delivered and quite often by the time the deals done a lot of the lead-time has been eroded and therefore it becomes unreasonable. And so all the owner/driver sees is the fact that they've got this unreasonable delivery time. Now you've got to ask if that's our fault or is it the broker's fault. Our understanding is that when we enter into an arrangement for delivery whether with the principal contractor or a consignor that we would be expecting the delivery to be done in the context of the law. If chain of responsibility comes in and people …aren't conscious of the ramifications of if you breach well that's something their going to have to learn to live with. And it's a key issue for us to educate people and our people that when they are arranging these things they have to act in accordance with the law .. We've got no evidence that anyone would force someone to deliver in a way that would make them break the law. However, it may be from time to time they don't consider the implications … (oral submission, Bill Healey, ARA).

Other issues to arise include how a customer might instruct a loading agent or consignor about what to do in the case of an unavoidable delay or whether this responsibility should reside entirely with the consignor or agent. It is not difficult to envisage situations where commercial interests might discourage a consignor from informing a customer that it was necessary to reschedule a freight task to a time later than originally proposed. Equally, those staff of a customer charged with arranging transport directly may not wish to be seen to 'fail' to meet a deadline. It is perhaps at this point that the need for establishing an environment where such pressures don't have serious safety consequences is most apparent.

While all these complications need to be recognised, evidence presented to the Inquiry and detailed below overwhelmingly indicated that customers frequently placed expectations on long haul truck operators and drivers that placed them under some pressure to say the least. The Inquiry received a number of very detailed submissions, illustrating the connection between client expectations and safety in particular sectors of the long haul road freight industry. A number showed how client expectations were shaped not simply by insensitivity to the needs of transport companies (although this certainly was a factor repeatedly identified) but by their own commercial interests and market pressures. The complex array of factors that shape transport arrangements, including scheduling pressure on companies, is well illustrated by the case of one company that is arguably typical of the fresh produce market.

3.2.4.2 *Transporting Fresh Agricultural Produce: An Example*

The company is a medium sized, and generally acknowledged as an efficient and responsible transport operator located in an agricultural district outside NSW but whose operations typically involve bringing agricultural produce into NSW, including the Sydney fruit and vegetable market. Figure 3 provides a simple illustration of the relationships involved – in this case fairly simple because the company concerned does not employ subcontractors and has a long-term relationship with growers.

The producers in this region grow crops sold throughout Australia, with some produce being exported. These growers normally deal with a produce agent who organises sales to chain stores, markets, individuals and others. Produce prices are volatile and may alter on a daily basis leading to substantial variations in returns to growers. At the other end of the chain, price variability and perishability of goods makes stores keen to minimise potential product loss by carrying as little stock as possible. In combination, these demands result in strong pressures on transport companies to deliver promptly (usually over-night and with scheduled arrival early in the morning) and at short notice (with trucks often being left waiting while produce is picked). These pressures exacerbate pressure on drivers.

Since markets, stores and individuals control times for delivery, logistical planning by the transport company, including driver shifts, has proved extremely difficult. Services must be highly reactive to highly tuned customer needs for just-in-time delivery in a very competitive market. The grower will wait for the most opportune 'price-window' to harvest and transport their produce for sale at the most profitable destination (creating uncertainty in this regard as well). Once the driver arrives, they must often wait without facilities or opportunities to rest and having to arrange a load for the return journey. In its submission, the company stated:

Due to competition and an over supply of reactive services past and present, it has become somewhat the "expected" for [the] driver to drive directly through to the destination for their customers. Whilst this may have been done in exceptional circumstances and as a favour for a particular customer/grower, it has unfortunately become somewhat the norm and not the exception.

Lack of communication between the agent – grower – receiver and Transport Company always exists, often transport is arranged by the agent, but can also be booked through the grower. Whilst there are "Duty of Care" provisions in the legislation more often than not a lack of understanding and education is displayed. People's general perception is that "It won't happen to me". (written submission, medium sized interstate transport company).

The company argued that the growth of e-commerce was, if anything, increasing the pressure on transport operators by providing businesses with greater ability to manage their stock flow over time and thereby reduce inventories.

The trend now within the industry where fresh produce is concerned is to hold as minimal quantity of stock on hand as possible, This ensures the product is fresh and last the longest period of time thus maximising return on investment. This shift has created more "just in time delivery" with minimal operational error or even built in allowances. The fluctuation in demand for product makes it difficult to predict quantities, thus creating under or over supply, placing extra demands on drivers.

Due to the decrease in stock levels this has also seen smaller amounts of freight being delivered to more customers. This in turn creates additional loading and unloading as well as extra driving requirements. Many freight forwarders use the services of interstate drivers to

collect freight from other areas to make up a particular load for the vehicle.(written submission, medium sized interstate transport company).

In recent years the transport company has made significant efforts to improve safety (being accredited with TruckSafe and also being a participant in a pilot fatigue management scheme). In its efforts to address the problems just identified, the company has tried to come to arrangements on scheduling etc with its clients and other operators. The company got in a level of agreement although one national carrier refused to cooperate. The latter problem is a recurring limitation with voluntary schemes since even one dissenter has the capacity to unravel the agreement especially they gain a commercial advantage from this refusal or threaten the business of other firms – which is often the case. There is also a concern that such arrangements could be deemed to breach the Trade Practices Act.

The firm has tried to educate its clients, by identifying "Duty of Care" legislative requirements and problems arising from a lack of planning by growers, to ensure the product is ready for transport when the truck arrives (leaving the driver waiting for extended periods or having to undertake loading). Other problems raised by the company include attempts to force overloading (since growers are paid by weight but transport is charged according to pallet space), extremely tight delivery times due to delays at farms, lack of sleep for drivers and possible infringements.

Despite these and other efforts the company was concerned that the issue received insufficient attention in the media, customer newsletters and safety programs.

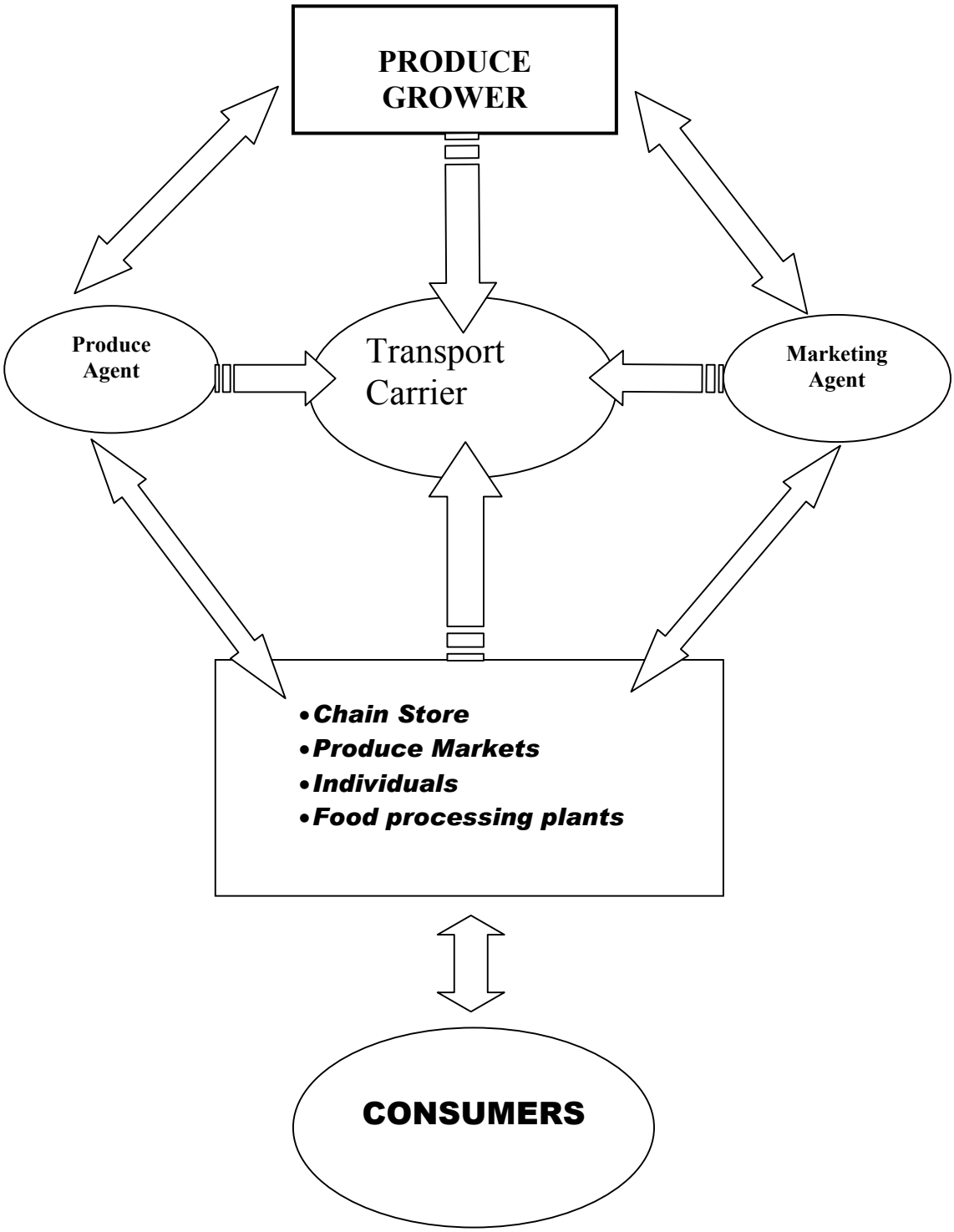
It makes it increasingly difficult when the common catch cry is "If you don't do it, I will find another company who will", and so competition rears its ugly head' (written submission from the company, a medium sized interstate transport operator).

The claim that transport operators who refused to meet customer demands on scheduling or other matters were threatened with the customer taking their business elsewhere was made repeatedly by transport firms in the course of the Inquiry. It was a claim repeated by many drivers, the TWU, CFAT and others. In more than a few instances, a specific example was cited to support the claim and this was invariably the case when the Inquiry asked for more evidence that the practice was occurring. As discussed elsewhere, a number of transport operators had also tried to educate their customers about their operating costs (by opening their books etc) in order to get them to acceptable higher freight rates. Though not without a degree of success, virtually all these operators reported losing business as a result.

In combination with other evidence (see below) the Inquiry came to the view that many customers show no understanding of the consequences of their demands in relation to delaying trucks when loading and tight delivery schedules. Given intense competition amongst transport operators, attempts by some companies to educate their clients or come to arrangements were at best only partially successful. Further, customer attitudes were clearly framed in a context where there was no recognition whatsoever that they might bear any legal consequences for such behaviour.

At the same time, this case illustrates that in, some industries at least, there are strong commercial pressures on customers to behave in ways that make it very difficult if not impossible for transport operators to meet their demands safely. In other words, this is a structural problem where voluntary measures and goodwill alone are very unlikely to succeed. Rather, what it needed is a means of ensuring these commercial decisions are framed with safety standards firmly in mind.

Figure 3: Produce Transport Supply Chain



3.2.4.3 *Other Evidence Connecting Client Expectations and Safety*

A number of submissions drew an explicit connection between client expectations, tight deadlines, use of drugs and driver fears for losing pay or work if they failed to deliver.

With the unreal deadlines that they are forced to meet drivers have to resort to drugs just to keep their job. It is a well-known fact that if you are late just because you were tired and went to bed you are penalised for it one way or another. A company driver will be sacked, and there are always drivers out there willing to take his place, and an owner/driver risks losing a load or a customer and it is money he cannot afford to lose. That's what it comes down to money. Big companies just don't care, they are more concerned with their profit margins than the health and safety of their drivers, and as I have already explained, owner/drivers just have to do it to stay afloat. I know of an instance of a driver being sacked because he was 15 minutes late. The customer phoned the transport company and complained, and instead of reasoning with the customer and defending his employee they sacked him. 15 minutes, most people get longer than that for a coffee break. The customer was hardly going to go broke in the space of 15 minutes. God forbid the driver should put his safety, and the safety of other road users, before the customer (written submission, wife of owner/driver southern New South Wales).

In both oral and written submissions another driver described an incident leading up to her dismissal. The driver started work at 5am and after doing local deliveries all day was told to take a load to Sydney, which she did after a two-hour delay while the truck was loaded. In Sydney the driver claimed to have got two hours sleep in a truck before returning to her home yard the next morning where upon arrival she was asked to do another delivery. Having been on the road for 30 of the last 34 hours, the driver's initial response was to refuse, upon which she claimed to have been told in no uncertain terms to take the load 'to keep the customer happy'. The driver further claimed that when her husband (also a truck driver) heard of this he complained to the management of the local office of the client. Shortly thereafter the driver was sacked by the transport company and told the reason for her dismissal was that the client no longer wanted her delivering their product. The driver later obtained employment with another transport company in the town but was subsequently dismissed, she claimed, when the manager discovered the events at her previous employer.

In addition to verbal and written submissions the Inquiry was able to draw on some survey evidence. The already mentioned national survey of driver fatigue undertaken by Williamson et al (2000) highlighted the impact of an array of work-related pressures, together with a desire to get home or get to adequate rest facilities. The 'return home' factor cannot be presumed to be unrelated to work, given that the job entails long periods of separation between the driver and their family. The overlapping of reward, insecurity and work/family balance matters is indicated by multiple responses on the part of drivers. In giving reasons for breaking working hours regulations almost half the drivers surveyed by Williamson et al (2000) nominated a desire to return home and around a quarter the desire to get to adequate rest facilities. Other reasons given are more directly relevant to issues being considered in this section. Amongst employee drivers around a third nominated tight schedules imposed on them or the need to do enough trips to earn a living (though the figure was only a quarter for large fleet drivers) while a quarter nominated 'to keep your job'. Other reasons indicated greater pressure on small to medium fleet drivers in comparison to those in fleets of more than 50 trucks, with over a third of the former nominating the need to do enough trips to earn a living (compared to a quarter of large fleet drivers). Similarly, around thirty percent of small/medium fleet drivers referred to the need to get in early to get the next load that was about double the figure for larger fleet drivers. Finally, while over 10% of drivers in fleets with fewer than 10 trucks gave rewards/penalties for delivery time as a reason, the response

for larger fleet drivers was 4.4%. By way of contrast, as might be expected owner/drivers felt more pressure to do trips to earn a living (well over 40% gave this reason) than employee drivers. About a quarter of owner/drivers referred to tight schedules or the need to get the next load (the figure was far higher for independent owners), less than 20% broke regulations to keep their job and between 4 and 9% reported the influence of delivery time penalty/rewards (Williamson et al, 2000:85).

In terms of breaking road rules (like speeding) rest/return home factors did not figure, although lack of attention entered the arena (with about 17% response). The other main reasons given were tight schedules (a third of employee drivers and 30% of owner drivers), doing enough trips to earn a living (about 30% for both groups), to get in early for the next load (a quarter of all but less than 14% for larger fleet drivers). Overall, delivery time reward/penalties were mentioned by just under 10% of both employee and owner/drivers (with no substantial difference amongst employee drivers according to size).

In sum, the Williamson et al (2000) study confirms a picture that, notwithstanding some variations between employee and owner/drivers and according to operator size, breaches of hours regulations and road rules by long distance truck drivers are strongly associated with tight scheduling, income insecurity and fear of losing their job/work. Direct bonus/penalties for delivery time are less an issue but contrary to the suggestions of some witnesses to this Inquiry they remain a not uncommon feature of the industry (even if rarer amongst large operators). Of course, while these findings are consistent with submissions made to the Inquiry, the study does not identify precisely which party in the transport chain is responsible for exerting these pressures. In particular no mention is made of the part played, if any, by consignors, load owners or clients (although the study does provide evidence of this connection in relation to other issues discussed elsewhere in this section of the Report). It might be suggested that these pressures emanate entirely from within the transport industry itself. However, available evidence does not make this a likely scenario. In those cases, generally rare, where a client took an interest in driver welfare and specified certain safeguard the evidence is that the transport operator readily adopted these. For example, a Victorian driver (oral submission) described a case where:

One of the yards I work out of in central Victoria, very high profile operator does a lot of overnight express work, also has a couple of other contracts. But one of the customers he carts for requires on his Sydney/Adelaide run, which is overnight, that they must supply a changeover driver. So just for that contract he has two drivers employed at the twelve-hour mark of the changeover time - only for that contract. There's up to five [of this company's] trucks a night running that corridor, two changeover and the other three go straight through.

3.2.4.4 *The Views of Clients/Load Owners/Receivers*

Despite widespread advertising of the Inquiry in the print media inviting submissions and publicity received during the hearings, the Inquiry received few submissions from load owners, clients, or consignees/receivers a notable exception being the Australian Retailers Association (ARA). In the USA, the National Industrial Transportation League (NITL) represents shippers and retailers but there is no similar body representing the major clients of the road transport industry in Australia. The ARA made both written and oral submissions and the Inquiry would like to place on record its appreciation for this input and the cooperation received at all stages. In the course of the Inquiry, a number of allegations were made about the impact of specific retail companies on the road transport industry. Indeed, this was the category of clients most consistently named as placing pressure on companies and drivers. Having said this, it would be entirely wrong to draw from this an imputation that the problems raised in connection with retailers differed in degree or nature from those raised in relation to clients/customers in other areas (like manufacturers).

Representing Australian retailers, the ARA has over 11,000 members nationwide (4,600 in NSW) and its members account for 75% of retail sales and 70% of the retail workforce. As the ARA pointed out, around 95% of retailers (and over 90% of its members) are small with fewer than 20 staff and who would rarely have deliveries through dedicated long haul road transport (written submission, ARA). On the other hand, as the ARA also noted, there are a small number of very large retailers (such as David Jones, Coles Myer, Franklins, Woolworths). These large retailers do account for a disproportionate component of retail sales and total retail employment. In its submission, the ARA argued that the impact of retailers on freight rates or driver behaviour had been overstated because most retailers were small and, as a whole, retail industry only accounted for just over 10% of the total road freight task. Citing ABS figures for the September quarter 1995, the ARA noted that the retail industry accounted for around 11% of the 42 million tonnes moved by road transport (written submission ARA pp3-5). In preparing its submission, the ARA surveyed national retailers, noting they were:

…surprised at suggestions that the retail industry has a significant degree of influence on the behaviour of long haul truck drivers (written submission ARA p2).

Expanding on this point in its oral submission, Bill Healy from the ARA stated:

In general, our industry believes we only have a limited degree of influence on some of the behaviour of owner/drivers in the long haul transport industry. We're aware that the Inquiry has been asked to look at the issue of clients, and the role of the client in the whole structure of the industry. Our investigations indicate that the industry as whole, while it may be a beneficiary of transport, isn't the actual client and in most cases it is the supplier, the manufacturer or the principal contractor. The second point is that we're obviously happy to work with any party that is nominated to review the recommendations…we'd rather be active than sitting outside the loop. However, we're still somewhat skeptical that our role is as significant as some other people have suggested to the Inquiry

The ARA also expressed some confusion as to what constitutes long haul trucking. At a preliminary meeting with the ARA the Inquiry indicated the definition it was using was based on the current logbook requirement (ie a single delivery trip of more than 100 kilometers - also the definition used by the 1984 May Inquiry). In its written submission the ARA used a definition based on interstate trucking and in it oral submission Bill Healey stated:

Another issue I think we wanted to raise at the outset is that we're still confused as to what long haul is and what the context of long haul is. And I think that is a major issue for us that we're not sure exactly the magnitude of the problem or the area we're dealing with.

No other body raised this concern but it could indicate that those making use of the long haul road transport industry either as a direct customer or a consignee may need to made more aware of the parameters of the industry so they can make more informed judgements.
In both its written submission and evidence to the hearings, the ARA emphasised that its members sought competitive contracts but always on the presumption that these would not entail a breach of regulatory requirements by the successful tenderer:

…in entering these contracts retailers expect the transport company to ensure the drivers comply with all legal and regulatory obligations (written submission ARA p2).

The ARA questioned submissions made by TWU to the Inquiry that retailer pressure was driving down freight rates and promoting unsafe practices, arguing they should be treated with scepticism unless concrete rather than anecdotal evidence could be provided. It also argued that it had little control of inbound loads and took appropriate measures to control outbound freight.

Retailers generally utilise long haul transport in two discrete yet interrelated levels. First, long haul transport is used to deliver stock to distribution centres and warehouses. In the majority of cases transport arrangements are part of a supply agreement and are managed through the supplier/manufacturer delivering the product to the warehouse. The retailers has limited involvement with the contractor and the lead time for deliveries is a competent of the overall supply contract.

This is particularly evident in large scale operations, such as supermarkets warehouses, where_supply chain management systems will initiate a reorder when stock levels reach a certain point. This ordering process enables the manufacturer/supplier to produce, package and deliver the product to the warehouse in a reasonable time period. The lead time for deliveries is generally negotiated as part of the overall supply agreement. Transport companies contact the distribution centre and are allocated a delivery slot based on the lead time established in the supply agreement.

The retailer therefore has nothing to do with the engagement of the transport contractor. Every effort is made to ensure that deliveries are received within the designated time slot to ensure the efficient processing of orders and to avoid unnecessary long delays for the driver.

Retailers have more direct control over "outbound" transport arrangements from warehouses to individual stores. These stores are controlled by the company and this provides far greater capacity to determine delivery times and processes. They usually involves a standard delivery timetable.

Representatives of Coles Myer recently appeared before the House of Representatives Standing Committee on Communications, Transport and the Arts to discuss issues associated with Long Haul Transport. This appearance provides an interesting insight into the processes of Australia's largest retailer. An extract from the proceedings is provided to the Inquiry (Attachment 1).

The retail industry has been criticised for causing unnecessary long delays for truck drivers waiting to make deliveries into warehouses. In addition, some transport companies and owner-operators have suggested that retailers expect unrealistic delivery times. The ARA is unaware of any significant evidence to support these claims.

Retailers admit that from time to time unforeseen circumstances may disrupt the normal flow through a warehouse, however, they maintain that this is the exception rather than the norm and generally deliveries are processed at distribution centres at the time indicated in the delivery advice (written submission ARA page 9).

The ARA also made the point (oral submissions, Bill Healey) that the bulk of freight movements handled by major retailers were predictable (and therefore subject to long term planning). The smooth movement of freight was also assisted by the fact that these retailers owned many of the warehouses along with large distribution (note too that unlike other clients/consignees large retailers sometimes have staff permanently stationed at commercial warehouse). In sum, the ARA view was that, while problems might occur from time to time, it was doubtful that there were systemic problems involving the member organisations it surveyed. The ARA was also keen to put on the record that the delivery slots developed by retailers tended to include some leeway.

The Inquiry put the question of more predictable transport arrangements to drivers making submissions to the Inquiry who delivered freight to the major retailers. This indicated some disparities in waiting time, with a more rapid turn around for larger operators doing regular tasks and with the equipment to facilitate rapid transfer of freight (two hours being cited as typical though longer periods of up to four hours were not unusual). Small independent and

predominantly regionally based subcontractors or owner/drivers, on the other hand, more typically complained of experiencing far longer delays (for examples see below). In other words, the response of some drivers appears not that inconsistent with the ARA's, though the overall picture is more complex, with different treatment of large regular shipments to those delivered by small subcontractors on a more irregular basis being hardly a cause for surprise. A detailed examination of scheduling and loading/unloading practices across a range of industries would be necessary to make more forceful statements about typical delays for different tasks and different clients, something well beyond the scope of this Inquiry. What the evidence available to the Inquiry does permit is the observation that delays vary according to a range of factors even within a particular firm or industry. At the same time, the survey evidence already cited and some more recent research presented below indicates that overall delays in loading/unloading are a substantial problem for the transport industry and not the figment of drivers' imaginations.

In its written submission, the ARA also argued that the Inquiry should try to identify the true level of safety problems in the industry. The ARA referred to evidence of a 50% improvement in road safety performance involving trucks over the past decade (an improvement outstripping other vehicles) and that truck drivers were responsible for only 16% of fatal road crashes involving articulated vehicles.

While clearly one fatality on the road due to inappropriate driving behaviour is too many, the figures provide an insight into the current situation in relation to road safety and the trucking industry (written submission ARA p7).

The ARA noted the submission of the Insurance Council of Australia identifying the need to target poor performance, given that of 6,000 workers' compensation policy holders (ANZIC Code 611 Road Freight Transport) 40 employers (around 1%) contributed 10% of premiums but accounted for nearly 25% of the cost of all claims. The ARA argued these 40 firms should clearly be targeted. The ARA does not draw direct conclusions from these observations in terms of the role of retailers. However, the clear implication is that safety performance has substantially improved, truck driver behaviour only accounts for a minority of fatalities, and further improvement should be sought be targeting the poor workers' compensation record of a number of transport companies.

Summarising its position, the ARA argued:

...the ARA believes that retailers do not significantly influence current practices in the long haul trucking industry. Retailers who tender for transport contracts do so on the basis that services will be undertaken in accordance with all legal and regulatory obligations. Price is only one factor in determining the successful contractors.

The competitive nature of the industry, however, may mean that transport contractors often are prepared to submit low cost tenders in order to get jobs. This means that any subsequent subcontracting to owner drivers is also at a low rate (written submission ARA p10).

The Inquiry accepts the ARA's argument that the impact of the retailers on road transport needs to be seen in context and that small retailers are unlikely to exert much direct influence either on freight rates or driver behaviour. The situation is relation to large retailers is qualitatively different, especially in the context of a growing concentration of ownership and control in the sector. According to the most recent data (1998-99) from the Australian Bureau of Statistics (ABS) retailers employing fewer than 20 persons accounted for 95% of total retail businesses but only 38% of retail income. Retailers with between 20 and 199 employees accounted for 4% of businesses and 21% of retail income. Finally, retailers with more than 200 employees represented only 1% of retail businesses but accounted for 41% of total retail income. In other words, the largest five percent of firms accounted nearly two thirds of total

retail income and the largest one percent accounted for over 40% of retail income. The pattern of retail concentration is by no means confined to Australia (ABS, 2000). In the USA by 1993 the five largest firms accounted for 48% of total sales (Bureau of International Labor Affairs, 1996:16).

Breaking down the retail industry by sub sector reveals an even more pronounced pattern of concentration. The ABS (2000) found the large business share of total retail income in supermarkets and grocery stores was 85% and this represented a substantial increase over recent years (in 1991-92 the figure was 77%).

In sum, the Australian retailing industry is bifurcated into a large number of small retailers who account for less than 40% of total retail income and a small number of large firms who account for over 40% of total retail income. Further, in particular sectors the concentration is much higher and increasing over time. While it is realistic to suggest small retailers exert little influence on transport operators it is stretching credulity to suggest that very large retailers, controlling a sizeable share of the total retail market, are unable to exert a significant influence on transport operators. The total size of the contracts they can offer operators provide a powerful incentive for the latter to accommodate to the needs of such clients. Moreover, their ability to provide ongoing work for smaller operators also provides a source of influence. The size of contracts they offer to suppliers (who provide for transport) means these companies will be keen to ensure their goods are delivered promptly, and with just-in-time the delivery windows may be tight. Evidence of the influence large retailers can exert on their suppliers and service-providers are not confined to the road transport industry (see for example the introduction by Woolworths of its own cut-price milk and large retailer moves into selling petrol). The relative influences being exercised at various levels of the subcontracting chain needs to be recognised.

Of course, the point just made does not only apply to large retailers. Patterns of concentration undoubtedly exist in other industries that use road transport, including some types of metal products (and cases involving companies in this area are referred to elsewhere in this Report). Given the vast number of load owners/clients and consignees that are served by road transport it was impossible within the time frame and resources of this Inquiry to investigate and report on details of this. Further, despite widespread advertisements of the Inquiry the ARA was the only representative organisation of load owners/clients to make formal submissions to the Inquiry (and the Inquiry is extremely grateful for their contribution). Given allegations about specific retailers made to the Inquiry and given the ARA's efforts to provide a detailed and thoughtful response to these issues its submission deserved careful attention.

Turning to other points raised by the ARA, there can be no doubt that several indicators of safety performance show an improvement over the past decade, but as the Inquiry has already demonstrated, a more comprehensive assessment of OHS performance gives serious cause for concern. It is equally clear, as the ARA suggests, that the road transport industry, and particularly some elements of it, need to take more responsibility for its own safety performance. At face value neither observation appears consistent with the notion that pressure from retailers is leading to deteriorating safety performance, although the improvement in fatality rates is undoubtedly the result of a complex web of factors and masking effects should not be discounted. As the ARA observes, safety in the industry remains a significant issue.

In keeping with the ARA's suggestion of seeking a true picture of the industry's safety record, the Inquiry drew on other evidence, including initiating a driver survey and drawing on the findings of a recent national survey on driver fatigue as well as other sources. Some of this evidence point to significant omissions in workers' compensation claims-based data (especially in relation to owner/drivers) and the need for caution in interpreting this data in the road transport industry. This view is reinforced by submissions to the Inquiry that some

companies, especially small to medium companies, discourage claims by employee drivers. The Inquiry agrees with the ARA that claims data indicate a strong case for targeting. Indeed, it could be argued that had WorkCover taken a more proactive prevention role in road transport this aspect may have been addressed already. It seems strange that one of the long mooted advantages of having compensation/rehabilitation and prevention activities within the orbit of single agency has failed to materialise in this case. The Inquiry finds this constitutes additional evidence for WorkCover taking a stronger prevention role in relation to road transport. Nonetheless, as has been detailed at some length in an earlier section, targeting is at best a partial solution given that workers' compensation data significantly understates the overall number of injuries experienced by long distance truck drivers (including those of a serious nature) and distorts patterns of incidence.

Finally, at a number of points the ARA was at pains to point out that in many instances its members, including large retailers, were not the owner of loads being transported but rather only took control once the product had been delivered to their premises:

Well the general position for us is who initiates the transport contract. Except for the outboud…generally our people do not initiate the trip. They don't see that they're initiating the trip and that's the important issue for us…Most of the negotiations for supply are with delivery included… We'll accept our role where it is justified. The point is we don't want to accept responsibility for things in actual fact aren't our responsibility and obviously if there are responsibilities there we'd have to review our total supply arrangements (oral submission, Bill Healey, ARA)

The Inquiry accepts that for inbound transport of freight retailers are not the load owner and, as consignees, only take possession once the freight is unloaded except where goods are bring moved from a retailer's own warehouse or a commercial warehouse storing the goods on the owners behalf. At the same time, the Inquiry heard evidence that pressure on transport companies did not emanate solely from those dispatching/consigning or owning loads but also those receiving them (ie consignees). Even if a receiver does not own a load they will still have an interest in ensuring it is delivered at a time that suits them, and with just-in-time, these delivery windows are often very tight. The Inquiry received frequent submissions in relation to precisely this sort of pressure from customers receiving a load and it was also raised in the Driver Survey undertaken for this Inquiry. Nor are these suggestions especially new. For example, in 1997 NatRoad executive director, David Cribb (de Brito, 1997:55) declared:

There is a definite influence on operators, for example, setting unreasonable delivery times and causing delays, and there is definitely need for an education program for customers…

Consignees, those who receive freight, are the real problem, rather than those who despatch it, the consignors.

Cribb provided a number of illustrations of this, including the case where a four hour delay in unloading a truck (from 7am to 11am) means the driver cannot get an adequate rest before going to pick up his next load (at 4pm). The Inquiry heard many submissions from drivers and operators making precisely the same point.

It should be stressed that the points just made are not confined to the transport of freight for the retail industry. From what the Inquiry has been able to discover about the attitude of load owners or clients more generally the following observations can be made.

First, clients have been inclined to argue that once the product has left their premises (if they are consignors) or until it is unloaded at their own premises (if they are consignees) its mode of delivery, including driver behaviour, is beyond their control. With regard to at least some

load owners there is disingenuous character to this argument. As transport operators are apt to be point out, where issues of security, quality and perishability are at stake, a number of the very same load owners want detailed information and a say on how goods are to be delivered and the transport progress at every stage. Detailed specifications, or even compulsory deductions by customers in relation to freight insurance are far from atypical. Further, as David Anderson, CEO of NatRoad (oral submission) observed a number of customers have sought to meet their due of care by passing on costly requirements to the trucking operator:

You must have this, you must have that, have roll-over tarps before you get in the yard, you must have under-side protection or whatever.

Second, in an analogous fashion it is argued that where realistic schedules are set then the client should not be held responsible for wayward practices on the part of the operator or the driver. The short answer to this argument is that where the customer takes such a precaution they absolve themselves from legal responsibility but on the other hand they cannot exclude loading delays etc for which they are responsible from the equation. Taking the point a step further, there are issues of genuine complexity in setting a realistic schedule will be determined by the driver's available hours and periods of rest the driver had prior to departure. It will also depend on the timing of trip (ie day/night) and whether the delivery is being made a subcontractor, a small fleet or a large truck (which may be able to change drivers at say Tarcutta). In practice, it appears that is usually the lowest common denominator that applies in the resulting schedules. It might be suggested that the answer to this problem is that as the principal contractor the client should take some reasonable measure to assure themselves on these matters by requiring the operator to provide this information, and that risk management might suggest some precautionary operator selection principles. At the same time, the Inquiry recognises there is a practical issue here and a recommendation in relation to a trip-based document system specifically addresses this issue.

3.2.4.5 *Conclusion*

The concerns of the ARA that retailers do not wish to be held legally responsible for aspects of the transport supply chain that they have no or very limited control over is understandable and almost certainly would be a view shared by other users of long haul road transport. As the ARA points out, correctly in the view of this Inquiry, there are a complex array of arrangements in the supply chain and to treat all users of road transport as load owners would be inequitable and unfair. The argument of the ARA is that problems besetting the industry arise from the practices of transport operators. Certainly, there are features of the industry (ease of entry, operator turnover and intense competition) that may be viewed as encouraging hazardous practices by some operators even in the absence of pressures from customers/clients. At the same time, there is also compelling evidence that customer/client pressures have contributed to hazardous practices. In practice, there is no simple divide between customer and transport operator responsibility, since pressures from customers undoubtedly encourage unrealistic scheduling by transport operators while the willingness of transport operators to meet these and other demands reinforces such expectations. Further, whether they are load owners/consignors or consignees, users or those relying on road transport do have a vested interest in its performance and, as would be expected, exercise influence accordingly to the extent they can.

The overall impression gained by the Inquiry is that the balance of bargaining power between the road transport industry and its clients is unequal. The long haul transport industry is very much customer driven in terms of rates, scheduling, waiting and destination times. It would seem suppliers, clients, consignees, consigners, loaders, fleet owners, other transport companies, freight-forwarders and receivers are imposing unrealistic expectations on the industry. Such unreal expectations encourage operators to cut corners to try to fulfil those expectations. This results in unsafe practices such as excessive hours, use of drugs, neglect of

machinery etc. The real issue here is not so much to apportion blame but to devise a regulatory system where all parties have an opportunity to act responsibly in that sphere where they do have influence.

3.2.5 Trucks as Mobile Warehouses: Just-in-Time, Delays to Loading/Unloading and Demurrage

There can be no doubt that the increased use of just-in-time inventory systems by retailers, wholesalers, manufacturers and other major clients over the past decade or more has placed increased pressure on the trucking industry. Delivery 'windows' have narrowed and transport companies are liable to receive less notice of a freight task and to get more calls for urgent deliveries because lower inventory levels (while saving storage costs for the customer) also leave less margin for error or to cover unexpected changes in demand. The Inquiry received numerous submissions attesting to this from transport operators and it was also something that regulatory agencies and others connected with the industry have become increasingly aware. Indeed, the Inquiry was rather surprised at the number of agencies and enforcement officers (such as police highway patrol officers) who raised the issue. Some evidence in relation to the impact of just-in-time (JIT) - and the exacerbating effect on this of e-commerce - was presented earlier in this section of the Report, and the potential for tight schedules to compromise safety also requires little additional elaboration. Therefore, this subsection will be concerned to identify some aspects of the just-in-time/scheduling issue not raised thus far as well as looking at the issue of loading/unloading delays.

One point that needs to be made is that the rapid delivery pressures associated with just-in-time result not simply from the direct effects of keeper lower inventory levels but also other decisions affecting the supply chain. This includes decisions on the number and location of warehouses storing produce for a client (which they already own or can draw on) and the ways in which these warehouses are administered. Further, where there are several available sources for the same product in competition with each other, then the commercial imperative of the more remotely located source may measurably affect time pressures on the transport operator brought in to do the freight task. As the manager of one large transport operator (oral submission) observed:

It's a cyclic thing that people go through, having warehouses in other states and then they close warehouses in other state. Half the people you talk to will say "we want to have one warehouse in a major city where we do a 'just-in-time' to the customer". Other people will say "no we want to go from that and we want to have a warehouse in Brisbane, one in Melbourne, one in Adelaide, bulk transfers between the two and then just do local deliveries. It's the one where you've got one main warehouse plus servicing direct to customers in every state that puts pressure on the times. Because they are competing with people in Brisbane who can arrive that day or the next morning and if you've got product coming from Sydney or from Melbourne then you're a day away.

The ARA (oral submission, Bill Healey) also saw shifts in the ownership of warehouses (by retailers or transport companies) in cyclic terms.

The logic of just-in-time (JIT) might also suggest that once a truck has arrived it will be rapidly unloaded and sent on its way to the next task. While such rapid shifts do occur, it is by no means a universal or arguably even a dominant practice due to a number of complicating factors. First, the Inquiry learned of cases where a truck is delivering to a commercial warehouse to replace depleted stock to a space allocated to a particular client but cannot unload because the movement of existing stock from the warehouse to the stores or other final destinations has been delayed. Strict queuing procedures imposed by the customer (especially in the case of refrigerate or perishable stock) may mean there is also no option for directly transhipping the newly arrived product in favour of that stored in the warehouse. Delays may

also arise because the warehouse accords other loads a higher priority on the basis of meeting the timeframe of a range of customers, because the warehouse lacks space or due to mismanagement on the part of the client. Those managing the ordering or delivery of freight for a client are not always knowledgable about the transport process/demands on long haul drivers/operators and the Inquiry heard that some customers are simply more efficient in this task than others. For example, some large customers have their own personnel permanently stationed at commercial warehouses to ensure efficient maintenance of inventory and stock movements but more often those in charge of the process are remote from the process. Second, even in the case where a truck is delivering freight to a warehouse, factory or store owned by the client there is no guarantee of rapid unloading and indeed often no imperative to do so since the client now knows the load is available whenever it suits them. For example, the client might prefer to load and dispatch trucks doing local deliveries prior to unloading all or some long haul deliveries.

The basic reason why just-in-time does not extend to the turn around of trucks by the customer or commercial warehouse is that there may be no commercial imperative to do so, indeed quite the reverse. Waiting time for long haul trucks is usually unpaid (ie without demurrage) while the drivers of trucks doing local deliveries, on the other hand, are paid by the hour. In other words, long haul trucks can become a useful and unpaid form of mobile storage, facilitating the just-in-time process but in no way benefiting from it – quite the reverse.

The Inquiry also received many submissions that once a truck had arrived it was often delayed for long periods, waiting to load/unload.

These are what we deem as the real abusers of the trucking industry. It is nothing for a truck to be kept waiting hours on end to be loaded or unloaded. It is the freight forwarders/suppliers/receivers who set the time limits the drivers have in which to deliver the freight. The grocery warehouses are the main offenders. The [named cold storage warehouse and location] treats the truck drivers appallingly. It is not uncommon for drivers to wait from 10 to 14 hours and on a few occasions they have been made to wait up to four days, to be unloaded. There is no shade, no toilet amenities and no food or drink facilities close by. The closest shop is approx 1km away. While that may not seem far, the drivers can not leave their trucks in case they are called in to unload, so by the time a driver walked to the shop, got his order and walked back to the truck he could be away as long as 45 min [sic]. Just long enough for someone else to jump the queue. Most places do not let the truck drivers go to bed and sleep whilst they are waiting. They will constantly be told "twenty minutes, twenty minutes" until they will be unloaded/loaded to make sure they do not go to bed. Once they have been unloaded they then have to drive elsewhere to re-load and have it all happen again. Truck drivers are rarely loaded before late afternoon/early evening and this means the drivers are made to drive all night to meet the time slots they are given, especially with market freight. You only have to see the amount of trucks on the highways late at night to know this is true. My husband usually has time to stop for either a shower or dinner. He rarely has time to do both let alone sleep. My husband gets an average of between 5-8 hours sleep per week. No-one can survive on that amount of sleep and be expected to have full use of their senses. That is when they truly become dangerous, and need to rely on "awakeners" to get them safely to their destination and ultimately home to their families. No owner/operator is indispensable and unfortunately there are too many willing to take his place so he must carry on and get the freight through. (written submission, wife of NSW based interstate driver for nine years, the last five as an owner/driver).

The Report has already noted that time spent waiting to load or unload was repeatedly raised as a pressing safety issue in the course of this Inquiry. Waiting time ranging from several hours to eight hours or more extend the working/non-rest hours of drivers (especially given the absence of rest facilities (preferably air-conditioned) and queuing practices that prevent

drivers from even getting rest in their trucks. Wherever it travelled to conduct hearings/take oral submissions, the Inquiry heard repeated complaints of loading/unloading delays and tight schedules with limited windows of opportunity/time slots. The same points came across in numerous written submissions. Drivers and others giving evidence to the Inquiry attributed these delays to a mixture of inefficiency, cost incentives favouring given priority to local driver deliveries over long haul drivers, and also the warehousing space/tight scheduling limits imposed by the just-in-time system. Criticism was directed at freight forwarders/warehouse operators, load owners and load receivers. The following quotes are typical of those made in the course of the Inquiry:

I name trucks the mobile warehouse because I believe that's how freight forwarders treat the transport industry because they don't have the overheads of major warehouses to house all these products. So if somebody loading from Melbourne to Sydney and they go in the morning and they might keep them there for six hours before they even start to load them and they then have to wait another three to four hours for their paper work which is already ready… There is a reason for that…You actually …get to Sydney too soon before they had a chance to clear the warehouse for your product and that is basically what it comes down too. (oral submission, wife/business partner Victorian based owner/driver).

We do delivery into a distribution center near Goulburn and had a load of toilet rolls and we were told to be there at one pm exactly. We were there at 12.30, proceeded to line up with everybody else… one o'clock came, two came, three o'clock and at 4.15 we were told to come in and they would unload it. Half the load got taken off and then they stop. I walked around until I found somebody 'well what's the story, not only were we here on time but we were here early, now some hours later why aren't you finished unloading the truck? Tea break mate, sorry'. If we had not been there by one o'clock who would have been penalised? We would, not them (oral submission, wife/business partner owner/driver southern NSW).

The retail sector and some of the manufacturing sector are dictating, and the window of opportunity or the window of delivery in some instances now is down to 10 minutes from the point of pick up to point of delivery. You could be talking over a legal travelling time of anything up to 40 hours and that is the time frame you got. So we have here…not so much in my view…the industry itself saying this is what's going to happen, it's the clients of the industry (oral submission, owner/driver southern NSW).

Complaints about loading delays did not simply emanate from owner/drivers and employee drivers. The TWU, CFAT, regulatory agencies and several industry associations also raised the issue. The complaints indicated that it was a general problem across the industry and not confined to just some clients.

At the same time, this is not to say the problem affects all areas of road transport or that there are not some areas of road transport where efficiency gains have not included faster turn around of trucks. For example, in its oral submission (Bob Gunning), the Livestock Association of NSW stated that increased efficiency amongst for-hire livestock haulers over the past decade had secured freight task away from not-for-hire operators (such as farming operations owning their trucks). Over the past three to four years the Association stated there had also been a dramatic reduction in the practice of numbers of local carriers queued up for three or four hours at saleyards. In most instances, livestock trucks were also able to unload at most abattoirs on a 24-hour basis with minimal if any need for involvement by abattoir staff. Animal welfare considerations (and associated regulations) as well as the abattoir's commercial incentive to get livestock (it now owns) in the best possible condition also play a role here in terms of minimising delivery and unloading times. Non-stressed and rested animals are less likely to result in 'dark cutters' (slaughtered animals with dark coloured meat not favoured by the market) and improvements in the shipping of animals has resulted in a very significant reduction in this problem.

However, the welfare/regulatory imperatives and commercial incentives that apply to livestock appear to be atypical. For an example of this it was necessary to turn to bulk carriers of grain and other farm-related freight, a category of transporters also covered by the Livestock Association. Here, the situation was quite different:

Not in livestock but with bulk carters one of the things that has clearly happened…is they come down from Sydney to deliver feed, for example grain or maybe pick up superphosphate or something. Some of the places they come into give them the most horrendous times in terms of turning up. Be there at 10 or 11 and then get away by four in the afternoon…it costs them a lot of money and …it costs them anguish…and they have to be alert. There's a psychological dimension to it too. One of the worst cases I heard about recently the drivers were told they're not allowed to use the facilities, they've been banned from the lunch room, can't use the toilet… (oral submission, Robert Gunning, Livestock Transport Association of NSW)

In short, the livestock and bulk handling cases highlight how, where there are strong commercial and market incentives on the client do so, a loading/unloading delays are addressed whereas if this is not the case, as with bulk handlers, the problem remains. The Inquiry was made aware of other areas of transport (including one part of refrigerated haulage) where the commercial interests of load owners or the owners of storage facilities gave rise to quite inefficient and potential dangerous arrangements for the transport operator.

As the research of Hensher and colleagues discussed earlier in the Report clearly showed, waiting times and efforts to evade them were a major source of potentially dangerous self-scheduling on the part of drivers. It can be argued that waiting delays imposed on trucks constitute a health risk to drivers. It exacerbates fatigue problems by preventing drivers taking proper rest (often confining them to the truck irrespective of the temperature outside) and encourages a breach of driving-hours laws because time spent in a queue is essentially unpaid work time. It is also a means whereby load owners/receivers effectively if indirectly encourage scheduling pressures on drivers as they try to beat queues, or after being delayed, try to make up time to meet another schedule or secure a further load. While load owners/receivers are unlikely to readily accept the latter interpretation, evidence of the link is clear and even if this was not the case it can be argued that commercial pressures from clients are the underlying problem.

This is not to say owner/receivers are entirely responsible for the problem. As the ARA (oral submission Michael Davidson) has pointed out, it is also possible that some owner/drivers who cut the time margin too finely between jobs (in order to maximise their business) can hardly expect a major client/receiver to reschedule its unloading to facilitate this. The Inquiry has no doubt this problem occurs and should be addressed (as back to back loads within narrow time frames are conducive to a breach of driving hours). Most of the owner/drivers the Inquiry spoke to were sufficiently experienced to leave a gap and the times mentioned for moving between jobs were of an order (six hours was the narrowest 'gap' mentioned and most were far long than this) that would, without considerable delays, have been adequate. At the same time, the were repeated references to the eagerness of divers to secure a job so as to not leave them stranded 'away from home' on the weekend and this could be conducive to rushing between jobs (along with other hazardous practices).

Bob Mitchell, President of the Livestock Transporters Association (oral submission) referred to the problem of drivers being tied to their truck while waiting to load/unload:

…they dare not leave their vehicle. They've got to be there to move it up because it's so competitive.

The wife of an owner/driver who accompanied her husband on trips delivering metal products to Melbourne made the following comments about queuing at the large manufacturer's (named) depot:

There is no time to sleep because…of the line. You sit there and wait your turn…You just can't get any sleep because they [the factory staff] just keep banging on your door telling you to move up.

And in response to being asked about the possibility of a ticketing system to organise queues and allow drivers to get rest:

Too easy, too easy. They won't do it. We have tried. We even asked them to put a number on the front of the truck, like just a card to say what truck number that is to call us in. Its far too easy for them. The problem is [named company] send out orders 24 hours a day…we want 20 trucks today. Through the whole period of the day they set out orders when they want it…So you're on call – in time freight (oral submission, wife of owner driver, Hunter Valley).

Throughout hearings the Inquiry heard repeated claims of a similar nature, namely that drivers were kept waiting at the customer's convenience, that truck drivers were treated without dignity and that their health and welfare was of no concern to customers. While it would be dangerous to presume that all customers treat long distance truck drivers in such a cavalier fashion the weight of evidence presented to the Inquiry is that such practices are not uncommon.

The problems just alluded to were raised again and again in the course of the Inquiry by a wide range of other parties (including academics with knowledge of the industry, regulatory agencies and insurers) and not simply drivers. For example, in its written submission the RTA argued:

Apart from directly putting pressure on drivers to break the duty and rest laws, players in the road freight chain can influence drivers' behaviour in other ways that have implications for industry safety. One example is queuing practices at depots. Drivers often have to place vehicles in a queue at a depot to be loaded or unloaded. This can mean that they have to spend hours behind the wheel, moving it a few metres at a time toward the loading point. Research has shown that this is very frustrating for drivers and it means that they cannot relax away from the vehicle or take a nap. Under the duty and rest laws, time behind the wheel must be counted as work.

The ability of drivers to effectively manage their fatigue would be greatly facilitated if companies had queuing systems that allowed drivers to take a nap or leave the truck while they wait for their turn. Unfortunately, many operators of the loading points are not prepared to take steps to facilitate drivers' fatigue management.

In addition to submissions made to it, the Inquiry received additional evidence indicating that delays to loading and unloading of long distance trucks was a serious issue not an aberrant occurrence. One such piece of evidence was the national survey of fatigue amongst long distance drivers by Williamson et al (2000) already mentioned at several points in this Report. This report found that of the 1007 drivers surveyed, around 30% had to wait to load or unload at the start or end of their last trip, with average wait being two to three hours. Loading queues were the common cause of these delays (Williamson et al 2000:xii). It should be noted that in addition to delays, over half the drivers surveyed reported having to spend an average of between 1.75 and 2.5 hours loading or unloading their truck on their last trip. While this loading/unloading does not always involve either the load owner or the receiver (where the load is being moved to or from transport operators/freight forwarders depots), situations where this is the case are not uncommon. These may occur where responsibility for

loading/unloading formally resides with the transport operator (whether an additional payment or allowance is made for this is a moot point). There are also situations where the driver undertakes these activities informally in order to expedite the turnaround (including cases where a mismatch with the working schedules of warehouse staff threatens to cause or exacerbate a delay).

For its part, the Williamson et al (2000:109-110) study concluded:

Pressures of loading and unloading were shown to be important in both the current and earlier survey in terms of being a potential contributor to fatigue and by reports from drivers that improving loading and unloading practices was a strategy that would reduce fatigue. The second survey asked about the specific issue of waiting to loading and unloading. The results showed clearly that waiting to load and unload was a major problem for drivers by contributing to their fatigue and by being a time pressure on them to arrive at their destination…

There has been an increasing acknowledgment of the role of the freight forwarder and the customer in work scheduling for long distance drivers over the past few years (McCabe & Grant, 2000). This study adds weight from a driver point of view to the importance of these sections of the transportation relationship chain in exerting pressures on drivers that are not consistent with fatigue management.

Existing arrangements provide absolutely no economic or regulatory incentive for clients to consider the health and inconvenience delays to long haul trucks, quite the reverse. There are two grounds for this assessment.

First, long distance trucks deliver freight usually at a set rate rather than a time-based payment. While major transport companies may, indeed it was suggested, often include demurrage provisions in contracts (with payment to be made after an hour or an hour and a half) there is little evidence that these are enforced. As the representative of one transport operator (oral submission) observed:

If you charge demurrage and you would find most contracts with customers would probably have a demurrage clause in it, nobody enforces it because nobody will pay it.

Almost all the fleet operators (let alone owner/drivers) spoken to in the course of the Inquiry felt they were in no position to include a demurrage provision let alone impose a charge for to do so would risk losing further work from the client. As one small fleet operator observed in relation to a colleague (another small fleet operator):

If [named operator] was to implement a demurrage program that said after two hours you pay…, they [the client] would just drop him like a hot brick and get somebody else. So the demurrage wont work, unless it was government legislated…(oral submission, small fleet operator, Southern NSW).

The absence of demurrage provides a stark indication of the relative bargaining strength of transport companies and clients in the road transport industry, and the real power that is exercised by the former despite protestations to the contrary. Demurrage, or the imposition of a charge where a client delays a truck for a lengthy period (and due to reasons that reside with the client rather than the transport operator) would be regarded by most as a commercial practice which makes sense both in ethical and efficiency terms. Yet, the issues at stake are more than this, because the evidence on what delays do to driver rest and future driving behaviour, and the implications of this for safety, are clear and compelling (see Hensher, Williams and other studies cited in this Report). The failure to pay demurrage is not simply a 'good commercial deal' on the part of the client. Rather, it also represents a practice that, by

discouraging rapid unloading of trucks, directly induce practices that put drivers and the community at risk.

Even in those seemingly rare situations where demurrage payments are made and a subcontract arrangement is involved, a number of witnesses to the Inquiry claimed these payments never found their way to the owner/driver or small fleet that actually delivered the freight. As noted elsewhere, for many owner/drivers and small operators getting paid the basic freight charge is difficult enough - let alone demurrage. In sum, it appears that clients seldom have to consider paying demurrage and as such there is no incentive for them not to waste the time of the long distance truck driver if this suits their own interests. The fact that there are no regulatory requirements in relation to affording delayed drivers opportunities to shower, change and rest essentially means that any potential incentive is absent.

Second, on the other side of the coin, in the absence of any regulatory requirements in relation to queuing there is no reason why clients/receivers cannot impose the most arbitrary process in terms of the allocation of trucks to loading/unloading bays. There may even be good reasons for putting long distance trucks at the end of the queue because not only is there no penalty to do this, since drivers of local deliveries are generally paid on an hourly basis any delay to these trucks does attract a cost. In other words, existing commercial arrangements make showing preference to local drivers over long distance trucks economically rational even though it imposes a series of economic and health-related costs on the long distance truck driver.

Conclusion

Weighing up the evidence in relation to waiting time/queues and demurrage the Inquiry has come to the view that this is a serious safety issue, especially when flow on affects to lost earning time and scheduling are considered. Current commercial practices in no way encourage a responsible approach on the part of those who essentially control the situation – quite the reverse. The just-in-time system operates for those using road transport but is not something that is accorded to the industry itself where in essence delayed trucks become mobile warehouses. There also needs to be a clearer recognition of the hazards inherent in tightly coupled logistical chains, epitomised by just-in-time. In their study of the development of transport systems and the implications of this for Dutch road safety, Stoop and Thissen (1997:112) observe:

…tight couplings in logistic chains may lead to vulnerability in a number of ways. Operational pressure will tend to dominate safety concerns. For example, drivers or forwarders who see themselves behind planned schedule will be inclined to give highest priority to catching up with the desired time schedule, often at the expense of safety margins. Such operators should fulfil their tasks within the boundaries of the safe operating envelope defined for their vehicles…

In other words, once we have a system built on tight couplings we should expect strong operational pressures to override safety. Where, as in road transport, the load owner and receiver often dictate the time slot but feel no responsibility to ensure the rapid loading/unloading of the truck other than the extent it suits their own interests, safety risks are exacerbated in a way that needs to be addressed.

Finally, as in the previous subsection this subsection found strong evidence that customers, including those receiving a load they may not take ownership of until it has been unloaded, have a profound effect on the ability of long haul drivers to obtain sufficient rest. This, in turn, has significant implications for safety in the industry that can no longer be ignored. Submissions to this Inquiry on this point were overwhelming and not simply based on anecdotes but included evidence from two recent surveys of drivers, both substantial and

arguably representative. Further, this evidence was entirely consistent with other evidence from earlier reports, inquests and inquiries carried out in Australia that were identified and discussed earlier. Finally, precisely the same issues have been raised in recent overseas research into the trucking industry. In the United States, for example, a series of studies have pointed to both shipper/dispatcher pressures and an association between tight delivery schedules and hours of service violations and (to a lesser extent) speeding violations. A survey of truck drivers in Florida by Beilock (1995) found at least 26% would have break speed or hours of service rules to meet assigned schedules. A survey of 1249 drivers at inspection stations and truck stops in four states by Braver et al (1992) found 73% reported exceeding permitted hours and this was associated with tight delivery times and penalties for late delivery (for reference to a number of other studies reaching similar conclusions see Braver et al, 1999:194). Braver et al (1999:194) also point to evidence that shippers have been imposing increasingly precise delivery times because manufacturers are holding smaller inventories (as part of JIT strategies) which compounds the cost of late deliveries (including lost customers).

Consistent with what this Inquiry was repeated told by drivers and industry representatives, a study by Neale et al (1998:26) based on focus groups of drivers held in eight cities covering seven states noted:

One problem cited is arriving at the customer's terminal at the scheduled time and being told that the driver must wait to be unloaded. While waiting, many drivers report that they cannot sleep because they will lose their turn in the queue, since the customer may not choose to wake the sleeping driver. Drivers reported waiting as long as 16 hours to be unloaded. Some drivers said that if a driver is delivering a load and is only a few minutes late, the customer can refuse the load. Drivers further alleged that if the truck driver arrives early, the customer can make the driver wait well beyond his scheduled time. Regardless, drivers stated that they are still expected to deliver the next load on time. Customers such as these were said to have a tremendous effect on the driver's attitude and hence his/her level of fatigue.

The study detailed other loading/unloading problems, including the need to supervise the process to ensure proper loading or prevent freight damage and instances where the shipper delays loading but tells their consignee the load is en route, leading to situations where the driver is blamed for missing their schedule. As in Australia, the problem of not being paid for periods of non-driving time was raised as well as the additional stress caused by transport companies siding with customers against drivers rather than risk losing business (Neale et al 1998:27). Summarising their findings, the authors noted every focus group highlighted the need for drivers to able to unload as scheduled and, if delayed, to sleep while waiting to load/unload without fear of losing their place as well coercion of drivers by dispatchers to keep driving (Neale et al, 1998:30).

By 1998 the United States Congress was sufficiently concerned that scheduling pressure from shippers was inducing hours of service breaches that it passed a law directing the Department of Transport (DOT) to investigate the issue and propose how it could bring civil actions against shippers, brokers, consignees and freight-forwarders (Braver et al 1999:194-195). A subsequent survey of both long haul drivers and 270 dispatchers by Braver et al (1999) found 20% of drivers reported the trucking firm employing them had imposed penalties for late delivery while 40% of dispatchers reported shippers had imposed lateness penalties, but only rarely. Dispatchers identified revenue as the major factor determining whether they accepted or rejected a load (75% cited this) while just under a quarter (24%) referred to delivery deadlines. The study noted that revenue considerations were probably '...a strong influence on delivery schedules in the very competitive trucking industry' (Braver et al, 1999:200). The study found trip mileage was the key determinant of schedules and dispatchers generally failed to factor non-driving tasks into their calculation of trip times. This may be seen as another manifestation of revenue pressure. Further, it may be difficult to counter pose revenue

and deadline pressures since it could be argued that the former makes it unnecessary in many instances for shippers to resort to the latter. In other words, the commercial power over price that intense competition bestows to shippers hardly places transport companies in a position to quibble over deadlines. This interpretation matches the evidence presented to this Inquiry. Also consistent with this interpretation, Braver et all (1999) conclude by noting that motor carriers may be reluctant to nominate shippers imposing pressures for fear of losing customers. Braver et al (1999) see this as making regulatory initiatives against shippers more difficult. The Inquiry examines this issue and potential remedies in a later section. At this stage it is enough to reiterate the point that the problems of scheduling pressures identified by the Inquiry are not unique to Australia but are also causing considerable concern in the United States and elsewhere.

The issue of tight scheduling, loading/unloading delays and demurrage requires urgent attention, and has been addressed in the major recommendations of this Report.

3.2.6 Commercial Practices, Operator standards and Entry into the Industry

The intense competitive pressures to undercut rates or engage in unsustainable or hazardous operational practices in the long haul road transport sector are not simply the product of client pressure but are also shaped by factors which make entry of newcomers into the industry relatively easy. These factors include:

- Relatively low capital start-up costs and a willingness of finance companies to lend money to potential entrants
- The absence of formal entry requirements for operators (apart from a truck drivers' license in the case of owner/drivers)
- The way entry in road transport is viewed as a means of 'buying a job', especially for those in regional centres with high unemployment levels/few job prospects or workers who have been made redundant

3.2.6.1 *Easy finance/easy indebtedness*

Any Tom, Dick or Harry can go and buy a truck. Now I'll give you an example. I've got a son in Tamworth…he can't borrow money to buy a house but the bank will lend him money to buy a truck. Can you believe that? (oral submission, small fleet operator, mid north coast NSW).

It's an easy industry to enter but it's a hard industry to survive in (oral submission, small fleet operator for 25 years and truck repairer for other operators, Hunter Valley)

One of the greatest shortcomings of the Australian Road Transport Industry since its beginnings…is the fact that entry to the industry does not necessitate any form of education or accreditation. Ultimately, we are left in many instances with average to good truck drivers who can neither run nor maintain a business successfully. Once pure survival becomes paramount, from a risk management perspective, we have established that the first corners to be cut are on safety, this in itself is a majority of the current problem with the industry. Just to survive, every last shred of the roughly formulated business plan is dependent on operating to dangerous limits (written submission, Owen Driscoll, NTI Ltd, page 24).

Throughout its investigations the Inquiry was repeatedly told that it was all too easy for a person with driving experience but with no demonstrated business skills to borrow money to purchase a truck and so start their own operations. The result is a surplus of transport operators, many with limited business knowledge or acumen, chasing a limited pool of tasks and who, in an effort to survive, must underbid each other on contracts. Considering the overall importance of the long haul trucking industry to the economy, it is essential that it be

conducted in a sustainable way. Whether or not some sort of licensing system should be introduced to help achieve this was an important consideration of the Inquiry.

These problems are not new to the industry. In the mid 1980s the National Road Freight Industry Inquiry (May et al 1984 especially pages 197 to 204) examined the issues of truck financing and entry into the industry. The report noted that it had received many complaints that finance companies were indiscriminately supporting new entrants to the industry, including the offering of low deposit/high repayment finance-packages to new owner/drivers that could not be sustained under normal market conditions. Criticism of the frequent use of homes as collateral was also noted. The Australia Finance Conference rejected this criticism by identifying its lending requirements, but as the Report observed:

The state requirements outlined by the Australian Finance Conference for truck sales and financing appear to diverge from the practices actually in force in the industry, although the divergence appears to have been greater a few years ago. There is, however, considerable potential for this divergence to reappear in time (May et al, 1984:204).

Driving Forward, a report on the public vehicles and carriers industrial legislation undertaken for the then NSW Minister of Industrial Relations in 1993, made the observation.

The fact remains that lenders do compete to provide truck finance and possibly to finance trading in 'goodwill'. They take financial but not social responsibility for the outcomes of their lending policies. There is an argument for further consideration of this matter in a broader context of small business borrowing and lending generally. It is supported by this Review (*Driving Forward*, 1993:22 cited in written submission by its author Hylda Rolfe).

This and other criticism by the report of the lending practices of finance companies in relation to truck purchases drew a response from the Australian Finance Conference in December 1993. In submission to this Inquiry, the author of the report, who has remained a keen observer of the road transport industry, did not resile from the position taken in 1993. Indeed she expressed the view that competition amongst financial institutions encouraged by ACCC may have made the interaction between truck safety and finance even more apparent. The Inquiry is unable to express any view on this. It can say, however, that the view that funds for financing the purchase of a truck are too readily available is widely held by many sections of the industry and other interested parties such as insurers.

Representatives from several insurance companies expressed serious concern at the ease of getting finance to purchase a truck and called for changes to lending practices. For example MMI/Allianz argued

Allianz believe that the finance industry should review current practices and impose minimum standards which require a new finance applicant to produce financial projections as part of a business plan. This should demonstrate how they intend to achieve a return on net assets (RONA) greater then their weighted average cost of capital (WACC refer section 1.5) and ultimately ensure their long-term profitability

...Anecdotal evidence suggests that the more traditional forms of security of bricks and mortar is all that is required for new entrants to purchase a new vehicle. Allianz propose that irrespective of the form of security on offer and the mix of capital required (debt and equity), it is more important for the business applying for credit to demonstrate that their proposal is viable before the institution advances finance (written submission, Dean Croke/MMI/Allianz, page 19).

Large companies use small operators as subcontractors and these small operators have a very high rate of insolvency. From 1996 to 1997 they experienced a 91% increase in bankruptcies.

Lone operators, the owner/drivers, experienced a 42% increase in insolvency in the same period.

It may be argued that the problem applies to small business generally and the market provides a remedy because those borrowers who cannot operate in a sustainable fashion will simply disappear. Even ignoring the consequences of bankruptcy or losing the family home on these drivers and their families, there are number of other risks and costs that the community may not choose to be exposed to. Most notably, in their efforts to make ends meet after entering into such arrangements, drivers may well engage in work practices (excessive hours, speeding, use of drugs etc) which breach the law, undercut drivers and firms operating legally, and expose themselves and other road users to an increased risk of death or injury. In a competitive labour intensive industry such as road transport, this scenario is indeed a likely outcome. Indeed, concern with these very issues led to the introduction of unconscionable contract provisions in the NSW Industrial Relations Act many years ago. While of some value, this represents at best a post hoc remedy.

3.3 Comparing the Australian Experience with the USA and Europe

In 1977 a restructuring of the US trucking industry initiated by the Interstate Commerce Commission removed regulations limiting market entry, collective rate-making and allowing carriers to favour larger clients. Increased competition reduced rates, especially for larger manufacturers and shippers, but thousands of carriers went bankrupt and the wages of non-supervisory trucking employees fell by 26.8% between 1978 and 1990 (Belzer, 1994:1). Non-union drivers suffered the largest loss in wages plus a significant increase in unpaid hours (for waiting etc). This widening gap encouraged an increase in the non-union workforce and with it ever more pervasive patterns of low payments and evasion of work-rules (relating to driving hours, drug use etc). Like other neo-liberal 'reforms', measured economic gains mostly derived far less from efficiency improvements than a combination of crude work intensification and a massive transfer of wealth from workers and small business to large owners of capital. Further, while environment and safety laws were retained (and indeed strengthened in areas like the carriage of hazardous substances and drug testing of drivers), the economic de-regulation exacerbated risks to drivers and public road users more generally. Belzer (1994:20) argued it made compliance with rules more costly for carriers, also observing that:

Since economic deregulation, hundreds of thousands of owner-operators and drivers working for small, unregulated carriers have become harder to locate, supervise, train and monitor…In addition, the highly competitive market fostered by regulatory restructuring provides a daily incentive to violate rules designed to encourage safe operations

Updating his analysis Belzer (2000:150) has argued the collapse of wage rates in trucking, both at an absolute level and in relation to other industries (like manufacturing) may well account for the driver shortages perceived by the trucking industry. As in Australia, Belzer (2000:139) found that US truck drivers were overwhelmingly paid on a performance-related basis, most commonly on a mileage basis (equivalent to the per kilometre rate in Australia) which rewards driving but not other work activities. Belzer (2000:142) argues the popularity of these systems is because they enable trucking companies to shift some of the risks they encounter from market pressures and customer scheduling demands, loading delays etc onto the driver. Belzer (2000:100-102) also contends that the low margins trucking companies operate on following deregulation means that any miscalculation by a firm can prove disastrous, helping to explain an increasing level of bankruptcies. His analysis of the return on equity bears some striking parallels with that of Dean Croke discussed earlier showing a downward trend throughout the 1990s (with a sharp fall in 1995 following intrastate deregulation). Belzer (2000:87) also points to the combination of customer pressure and

intense competition as offsetting the benefits that might otherwise have followed industry concentration (through mergers etc).

Even though the industry is more concentrated, competition remains very high because customers are cost driven and competitors can engage in "destructive" competitive practices…The carrier making the back haul sets the rate, in this case, and nobody makes a profit. In other words, variant capacity utilization may systematically justify very different rates, and since at equilibrium every carrier is hauling freight at the lowest possible rate, profits remain chronically low. Controlling for information asymmetry, each customer will purchase its preferred bundle of lowest rate and highest service, keeping competition intense.

Belzer's analysis has found support by other studies of the US trucking industry. For example, Cynthia Engel, an economist with the US Bureau of Labor found that the intense competition that occurred in the wake of deregulation had a profound effect, with strong benefits to consumers but rather more dubious effects on the industry itself. Engel (1998:40) concluded:

Competition has resulted in increasing capital intensity in the industry, as firms strive to reduce average variable cost per load… Increased competition also has led companies to change the character of compensation plans for their workers, replacing those based on time with plans based on output. Over the years, wage premiums for unionised truckers have been bid down, and union representation has fallen dramatically. Increasing workloads and less attractive pay have led to high labor turnover and persistant driver shortages.

It is worth noting in passing that several transport company managers making submissions to this Inquiry who had visited the USA made observations about the impact of deregulation on truck driver wages, and the consequent effects on labour turnover and experienced driver shortages essentially consistent with Belzer et al's analysis. One referred to his surprise that during a visit in 1997 major companies were experiencing turnover rates well in excess of 100% and one apparently very good operator based in Oregan reported with pride that he had reduced driver turnover to 86%. At least two felt the drug and alcohol regime in operation in the USA had exacerbated the driver shortage.

A detailed survey of 573 long haul truck drivers undertaken by Belman et al (no date, 1998?) in 1997 found that the majority of drivers were working at or above the 60 hour maximum specified by hours of service regulation. Further, the survey indicated that long hours were the result both of pressure of freight firms and shippers, and driver efforts to maintain their income. The survey found that although drivers had a strong commitment to their profession (the typical respondent having worked in the industry for 12 years) this did not translate into loyalty to an employer. The average driver had been with the current employer only 18 months and one quarter of drivers had quit in the previous 12 months. This turnover was seen to a consequence of a labour shortage to firms was actually a result of high turnover amongst drivers who remain in the industry. In other words, drivers were dissatisfied with their employer and the study argued for measures to address this and improve driver retention.

Again, at the risk of belabouring the point, this is yet another survey that found evidence pressure from customers was a factor in the long hours worked by drivers. In short, evidence pressure from customers/clients induces hazardous practices in the road transport industry is not confined to Australia and it is certainly more than anecdotal.

Recent research in the USA also confirms the strong relationship between reward levels and safety that has been repeatedly raised in the course of this Inquiry. In 1995 JB Hunt, the second biggest trucking company in the USA, announced a substantial wage increase for its drivers that placed it well above the norm for the industry. Professor Belzer and colleagues (2000a) were able to access company records to assess the impact of this change on safety. Belzer et al found that the increase had a significant discernable effect in reducing both the

incidences of crashes and labour turnover. Higher pay enabled the company to select more desirable driver characteristics from a safety perspective, and crash likelihood also progressively decreased with additional tenure suggesting some policies leading to lower turnover also lower crash rates. The strong relationship between pay and safety was confirmed by a later cross-sectional study based on a national survey of driver wages and UMTIP survey of carriers (Belzer et al, 2001).

In another study Belzer and colleagues (2000b) examined the hours of service issue (more than half US drivers exceed the 60 hour limit), and especially the impact of unpaid working time (ie time not spent driving but waiting for loads etc). This study was undertaken for the Office of Motor Carriers in conjunction with a new hours-of-service regulation. Belzer et al found that the more wasted (ie unpaid) time drivers have, the more likely they are to squeeze too many hours into a day, forcing schedule irregularity and excessive hours. Indeed, they found that the number of unpaid hours a driver worked was the best predictor of work in excess of 60 hours per week. At the same time, they calculated that if unpaid non-driving time could be reduced by 25% the efficiency gain would eliminate the cost of compliance. In terms of a policy response, Belzer et al (2000b) argued that the consequent safety risk could be reduced by charging shippers and consignors for delay time and paying drivers for this time so they log it on as duty (measures to reduce driver turnover were also advocated). These findings are not inconsistent with many submissions made to this Inquiry and earlier research undertaken by Hensher and colleagues.

The promotion of competition by the European Commission is having a similar effect in the European Union. According to Hamelin (2000:5), subcontracting, business start-ups and failures spread at the height of the deregulation 'fever' from the mid 1980s. Competition between freight forwarders held freight rates down, with many transport firms, some barely viable, taking contracts at 'rock-bottom' prices just to stay in business and the turnover of firms enabling the embedded costs of the haulage system (including those associated with economic swings) to be farmed out. Hamelin (2000:5) argues that fierce competition between hauliers has been instrumental in making anti-social working hours the norm for drivers. This can be seen as one aspect of a broader question as to whether the social costs of road transport, including public safety, should be borne by the industry and passed on in haulage rates, or regarded as a cost to the community.

By the mid 1990s, if not before, regulators (and others) were expressing serious concern at the safety implications of the simultaneous growth of the road freight task at the same time as freight rates and profit margins were being squeezed. In 1996 Derek Gibbons from the British Department of Transport (Bousfield, 1996:66) observed:

As profit margins get smaller, we are worried about the 'cowboy' companies that aren't properly licensed and don't train their drivers correctly.

As in Australia, there have been recurring complaints from drivers that the pressure from customers and the just-in-time system is undermining safety (Bousfield, 1996:66).

From 1998 onward the level of competitive pressure was intensified as a direct result of the European Commission's economic reform process. As in Australia, agencies, interest groups and academic economist and policy analysts supporting these regulatory reforms conspicuously ignored occupational health and safety effects or other externalities associated with the change (see for example, Kerwer and Teutsch, 2000). The first (anti) cabotage regulation on road transport introduced in July 1998 effectively removed license requirements to drive in particular countries, enabling drivers to not only take loads into countries where they were not licensed but also to do domestic trips within these countries on an 'occasional' basis. Precisely what 'occasional' means is yet to be decided, with individual countries reluctant to make a move that might jeopardise the competitive position of their own transport

operators. Given significant disparities in licensing requirements and safety legislation, wage rates, working conditions and union density between countries (especially between southern and northern Europe), the cabotage regulation has intensified competition between transport operators in different regions in Europe. According to Hamelin (2000:25) this competition has led to a further cut in already low freight rates. This has occurred in a context where the only common law governing labour management amongst European hauliers is EEC Safety Regulation 3820/85 (passed in 1985) and there are serious disparities and omissions in the legal framework governing driving hours. In other words, there is a mismatch between direct competitive pressures and a patchwork quilt of regulatory protection to prevent anti-social outcomes.

Even the largest operators in the Netherlands have sought ways to cut operating costs by changing their employment practices and manipulating legal categories. Analogous to the maritime industry, it has also led to emergence of companies using drivers from Eastern Europe at low 'flag of convenience' wages. This practice has already caused concern amongst representatives of British haulage industry. A recent inquiry into the industry by the House of Commons Environment, Transport and Regional Affairs Committee (2000:xxvii) heard evidence that drivers from Hungary, Romania and Slovakia were being between 16 and 23% of the pay of a driver from the United Kingdom. These low wages enabled companies to 'double man' their lorries and so operate for much longer hours and more cheaply.

The aforementioned issues have also caused concern in Sweden, which has around 35,000 long and short haul truck drivers. In Sweden, with a highly unionised transport workforce (paid under a single collective agreement despite pressure for separate enterprise agreements from the Swedish Competition Authority), and, unlike other parts of Europe, relatively few self-employed drivers, the effects are liable to be most profound. Already, a number of Swedish transport firms have sought to relocate their operations. As elsewhere, researchers (see Frick, 2000) have pointed to the fragmented nature of the industry, a poor understanding of OHS, the inability of operators to resist customer demands, the impact of deregulation (especially the right of cabotage and leasing of Eastern European drivers) and lack of enforcement of minimum standards. It is argued that cost savings achieved through inferior working conditions and compromises on safety have emerged as major means of competition. There is also growing evidence of undercutting of working conditions by smaller operations and drivers accepting below agreement rates or individual (ie kilometre rate) contracts in an effort to safeguard their jobs, as well as an increase in hazardous work practices (Segerdahl, 2000). The Swedish Transport Workers Union has countered the threat by pursuing a Scandinavia wide collective agreement (it is difficult to see how this response more than partly meets the challenge posed) and more effective EU Directives to govern the industry.

As in the USA, there is growing debate in Europe as to how to retain a solid core of professionally trained and experienced truck drivers. Yet as in the USA, there are signs that intensified competition is leading to a more volatile, younger and inexperienced workforce, and there is clear evidence that new inexperienced entrants have a significantly higher rate of crashes and work-related injuries than their more experienced counterparts (Hamelin, 2000:22). In other words, the shift to a more volatile workforce will also mean a more hazardous workforce.

3.4 Putting Clients/Consignors and Consignees in the Regulatory Loop

A range of submissions argued that clients should be brought into the regulatory loop in a meaningful way.

Also required is for manufacturers, wholesalers and retailers to order their goods and sales of products days and weeks ahead of time, not just in time as is the current practice (written submission, Western Australia).

Referring to reasonable expectations of clients and consignors and enforcement, WorkCover NSW stated:

WorkCover considers that the underlying tenet of effective safety management is the proposition that all hazards must be identified and all risks must be assessed and controlled. It is essential that this process be applied during ***all*** *phases of delivery of a project from conception to completion…*

WorkCover considers that clients and consignors have the power and the authority to influence driving practices and that they have responsibility for the management and enforcement of a range of safety related matters such as speeding, driving hours, drug use and loading arrangements.

Accordingly, it is WorkCover's view that investigation of the causes of accidents or incidents should be broadened beyond considerations of physical aspects and driver behaviour so as to include investigation of consignment and transport arrangements and environmental factors affecting driver behaviour. This approach properly extends accountability to include the parties with the authority to effect change (written submission, WorkCover NSW, pages 14-15).

Ken Smith, a consultant with considerable knowledge of the industry offered the following observations:

At the bottom the core issue is that road transport is a highly competitive service industry, with more operators and trucks than there is freight to shift…The competitive nature of the industry is such that the industry has responded to productivity improvements by cutting rates, rather than pocketing or re-investing the revenue benefits, which is something that really benefits nobody.

I think it is agreed that rate fixing and operator licensing is unlikely to be politically acceptable, even if there were not economic reasons against them. But one viewpoint to consider is that all this is in the nature of keeping down the cost to the consumer, out of some fear the consumer won't buy if prices go up.

I don't know what the transport component of a packet of cornflakes is, but I doubt if it is significant, and I doubt if the consumer would notice if it were as much as doubled. But the end result of the present regime is that a portion of the true cost of the transport component of commodities is being pushed down the chain to the only link who cannot pass it on – the driver.

Evidence has been given that consignors are sometimes willing to strike a more reasonable rate if the truck operator is able to demonstrate his true costs and that he cannot do it for less than a certain amount. This should spread if the truck operators hold up their end and do not accept a lesser rate – especially if it is reinforced by judicious waving of the duty of care stick (written submission, Ken Smith, page 4).

Others made the point that a clear regulatory message needed to be sent to both clients and transport operators:

But its also got a lot to do with the people who are growing and picking and packing the produce, and those that are in the middle selling it. There's some middle people in there too who dictate the terms. The people who really determine how much the truck diver is paid and when its got to be there. See, there's a lot of people in the chain that need to be educated…and made an example of if they continue these dubious practices…What we need

in this country is we need a group of people, and unfortunately some truck operators, to be made an example of. People aren't going to going to take the government's regulation seriously while ever they have all these threats that just amount nothing. Truck operators have been very shrewd at working their way around regulation and laws for many, many years…. We've actually go to not only say here's the regulation folks but here's the penalties and then here's the examples. (oral submission, Dean Croke).

It should be noted that the need for regulators or governments to consider the influence on safety of the practices of consignors and load owners is neither new nor novel in connection to freight transport. In its Review of Ship Standards and Safety the federal parliament's House of Representative Standing Committee on Transport, Communications and Infrastructure (1994:31-32) identified charterers and cargo owners as one of four main players that needed to be targeted in terms of eradicating substandard shipping. The report argued that, given the amount of information available, charterers and cargo owners had no excuse for hiring substandard operators and those that did should be subject to public exposure. This Report can find no reason why an analogous argument cannot be made in relation to those that use road transport, especially since essentially similar requirements are commonly imposed on road transport operators in relation to quality (in terms of timeliness, stewardship of the product in transit etc).

3.5 Summary and Conclusions

Evidence given to this Inquiry and evidence of earlier inquiries/research indicates that, notwithstanding periodic fluctuations due to bouts of bankruptcy etc, oversupply of drivers is a long term and structural feature of long distance trucking. This creates competition for work that, in turn, represents a serious and ongoing inducement for operators to undercut freight rates, squeeze in additional trips, evade regulatory standards and engage in other practices that pose a direct threat to safety.

Poor business practices on the part of transport operators, especially small operators, exacerbate pressures to cut costs and corners in relation to safety. This issue, highlighted in a number of submissions such as that of the ATA, needs to be addressed as a matter of urgency and a means of doing this is addressed in a later section of the Report. At the same time, it needs to be recognised that poor business practices are an exacerbating factor not a root cause of economic pressure on transport operators. The evidence collected by this Inquiry makes it clear that the transport industry is generally in a weak bargaining position in relation to its clients. The result of this, and lack of client recognition of responsibility for safety outcomes, has been tendering conventions, contract provisions and freight rates that are not infrequently incompatible with compliance with laws and levels of safety deemed acceptable by the community.

Although it has long been recognised that trip-based payment systems are not conducive to safe driving practices they remain a common arrangement, almost certainly because they are means of transferring the economic pressures on transport operators from low freight rates and tight delivery schedules into work practices.

Another issue worthy of serious consideration is the impact of e-commerce on client/operator relationships. At several points during the Inquiry it was suggested that electronic commerce had facilitated lower inventory levels, shorter 'transport windows' and an even tighter coupling of the supply chain. It was also claimed (see the next section) that electronic communication led to a reduction of the 'paper trail' that might be used to detect illegal practices. In the mid 1990s the federal Department of Industry Science and Technology sponsored a project on domestic transport electronic data interchange (DOMEDI) involving major road transport companies, two rail freight operators, major clients (such as BHP, Woolworths and ICI) and large no-for-hire truck operators like Australia Post. The aim of the

project was to streamline domestic transport by reducing the amount of paperwork and replacing it with a more standardised (numbering, labeling etc), comprehensive and coordinated electronic information exchange. The project dealt with consignment instructions (proof of pickup, billing information, receiver's copy, proof of delivery), billing and invoice statements, and the processing of transport documents. The final report was presented in 1998 (Department of Industry Science and Technology, 1998).

In 1999 the Department of Communications, Information Technology and the Arts, together with the National Office for the Information Economy (1999), issued the results of scoping study on the development of e-commerce in road transport. The report highlighted that Woolworths alone could save up to $1 billion per annum if all its dealings with the transport sector were done electronically. The key benefits were seen to lie in the area in terms of faster/reliable exchanges of information, freight tracking through the supply chain, communication with vehicles (including weather/traffic information), and meeting regulatory requirements. The report (1999:v) identified a number of impediments to the shift to e-commerce including lack of understanding and training (and time for training) in the transport sector, lack of perceived customer demand, costs and diversity within the sector. Counterbalancing this were a series of incentives included competitive pressures, opportunities for better management and improved customer service. The report noted large companies, such as Toll Express, had installed computer screens on vehicles working on their Ford contract, while others were using global positioning systems (GPS). It also noted potential improvements in transport scheduling, including vehicle booking systems, to avoid truck queues and loading/unloading delays. At the same time, the report begs a number of serious questions, most obviously the capacity of smaller transport operators to embrace this technology. The cost of installing transponders in trucks is raised and the report does make references to the diversity of the industry but really fails to develop this point. At least as important, much of discussion of efficiency gains pertain to those accruing to customer/clients (indeed it is acknowledged that some changes will require greater discipline on the part of operators) and regulatory issues are confined to taxation.

While not questioning the value of moving to electronic communication the Inquiry would note that there is no evidence in either report that serious consideration was given to safety, or whether indeed, safety-related issues (such electronic records of driving hours or trip details) could be incorporated into the new systems. There is a possibility to improve both efficiency and safety from new systems but this is unlikely to occur (and indeed the effects may be negative) unless some consideration is given to the safety dimension. At least one firm has tried to move into this niche by distributing freight task availability on the internet (for a flat fee), arguing this affords operators greater load selection, improved time management and the ability to comply with legal rest periods. However, this is hardly likely to address the issues just raised. What this Inquiry as found somewhat surprising was the failure of either report to address the substantial use of subcontractors in the industry and the problems this posed for more elaborate e-commerce systems. While some large customers may alter their use of transport operators if they see benefits in terms of e-commerce, many others may simply prefer the cost-savings they can achieve through subcontractors, resulting perhaps in an increasingly bifurcated transport system.

As a final point it should be noted that additional evidence on the relationship between commercial practices and safety is to be found in other sections of this Report. For example, in Section 2 commercial considerations that may compromise the safety and wellbeing of drivers were raised in connection with truck configuration. More evidence on the connection, including how commercial inducements shape regulatory evasion, will be presented in succeeding sections.

SECTION 4

EXTENT OF PROPER ENFORCEMENT OF DRIVING HOURS, SPEEDING & DRUG USE

…if I'm being put in a situation where I have to break the limits to survive then I will break the law to survive…its alright to talk about enforcement but if you don't fix the underlying problem first then forget the enforcement. I just want to point out to you that there's no way known that I'm going to abide by any enforcement regime unless I can make a dollar. If I'm viable then the enforcement becomes a secondary issue (oral submission, owner/driver southern NSW).

Safety in the long haul road transport industry, as in the road transport industry more generally, is subject to a complex overlapping web of different laws administered by a number of regulatory agencies. At least four separate bodies of legislation directly impinge on trucking, namely road transport legislation, occupational health and safety (OHS) legislation, environmental protection/hazardous substance legislation, and industrial relations legislation. Up to the present time the overwhelming if not entire focus of enforcement activities has been under the auspices of safety provisions in road transport legislation. Apart from driving hours regulations and some other specific RTA road safety measures (such as Culway, highway weighbridges and Safe-T-Cam) long haul trucking is subject to the same law as the road transport industry more generally, with the NSW Police Service and the RTA being the prime enforcement agencies. Given this, much of the initial discussion in this section will focus on enforcement activities under the umbrella of road transport legislation. At the same time, the role that could be played by other agencies is raised, as are suggestions as to how enforcement might be improved.

Before turning to specific problem areas and enforcement instruments it is important to make a number of general observations. First, the information collected for this Inquiry indicated that there was a widespread view that, whatever its other faults, the current enforcement regime was inadequate in terms of the overall level of enforcement activity. This was the view expressed not only by the TWU and enforcement agencies but numerous other parties including major bodies representing trucking operators. Many suggested that relative to the growing number of trucks on the road the level of enforcement was actually declining. For example, in its written submission (at page 16) the NSW Road Transport Association stated:

The current enforcement of existing Road rules is practically non existent. There appears to have been a gradual reduction of enforcement resources over the past few years particularly in the heavy vehicle end of the industry. Vehicle numbers are increasing making already struggling resources even thinner on the ground.

In responding to this issue a number of submissions argued that a lack of co-ordination amongst regulatory agencies undermined effective enforcement. The Australian Retailers Association (ARA), for example, argued:

There appears to be a problem in enforcing current regulatory obligations within the trucking industry. Enforcement responsibility is split between the Police and the relevant state transport authority. Police enforcement often only occurs after there been an accident or traffic infringement.

Effective regulation requires a high risk of detection and punishment for breaches of obligations. The current lack of co-ordination, across the States increases the risk that drivers will operate outside the law (written submission, ARA).

The NSW Road Transport Association also endorsed the need for coordination although it placed more emphasis on achieving fair and consistent patterns of detection/prosecution within the state:

Enforcement, once re-instigated must be fair, but most of all, consistent within the state and preferably within the whole country. One of the biggest gripes that operators have about enforcement is the lack of consistency across the state (written submission, NSW Road Transport Association, page 17).

The issue of co-ordination will be examined in detail in a later section of the Report.

4.1 Driving hours

It's a known fact that any of these drivers that are pushed to this extent will use two or more logbooks… Its very simple all you do is walk in and say "I left my logbook sitting on the fuel tank and I drove off, the kids scribbled in it while I was at home last weekend, I need a new logbook." Its too easy, too simple to be able to get another logbook. I can relate a story about a driver who actually boasted he could do three and four trips to Brisbane/Sydney, plus all his running around, down in Sydney [in a week]. *Sadly, he's not with us any more…single vehicle incident* (oral submission CFAT representative, Northern NSW who lost her husband in a truck crash)

Effective enforcement of driving/working-hours regulations has long been a problematic exercise, not only in NSW but in other jurisdictions, with evidence pointing to widespread flouting of regulatory requirements. For example, a blitz conducted by the Victorian Police in February 1997 (Operation Austran) recorded 1,213 offences relating to falsified logbooks or 47% of the total. In August 2000 the Victorian Police Road Safety Task Force conducted another week-long blitz at Mildura, Swan Hill and the main Sydney and Adelaide highways in August 2000. The Task Force intercepted 497 trucks and detected 93 offences of exceeding driving hours, 83 offences relating to incorrect logbook entries, 9 other logbook offences, 8 offences of exceeding dimensions, 8 exceeding weight offences. It also issued 89 roadworthy defect notices. Police involved later expressed concern at the level of logbook/driving-hours offences and told a meeting of the Victorian Enforcement Liaison Group that they building profiles on companies to target with on-site audits (*VRTA Member Alert* No.14, September 2000).

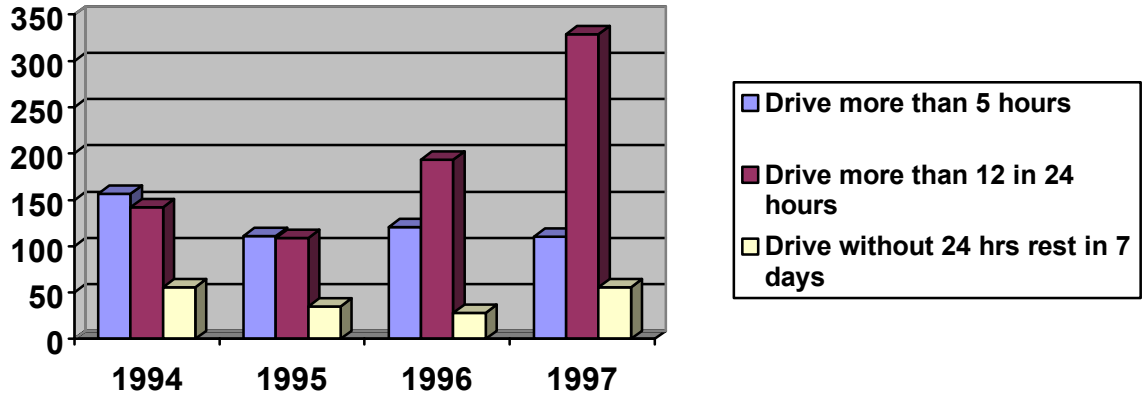
Likewise, driving hours offences are widespread in Queensland. For the Queensland component of the Austrans campaign out of 4225 heavy vehicle intercepts 77 trucks (1.8%) were grounded for excess driving-hours offences and 381 logbook offences (9%) were issued. In the first five months of 2000 the Traffic Support Branch of the Police Service (which focuses on vehicle safety and fatigue) issued 842 breaches, 622 of which (74%) were for logbook offences. Between March and May of 2000 Queensland Transport Inspectors (the equivalent of RTA inspectors) issued 349 breaches for logbook offences or almost 20% of all breaches for that period (written submission, Queensland Transport page 6).

During the period 1994 to 1997 NSW Police recorded a 58% increase in offences where drivers recorded over 12 hours driving in a 24 hour period and a 50% increase in offences where drivers failed to have a 24 hour rest period in a seven day working week (Figure 4). Croke (1998:30) argued this evidence of widespread and possibly increasing flouting of driving hours requirements was a consequence of operators encouraging increased vehicle

utilisation in their efforts to maintain viability too offset the squeeze on margins identified earlier as well as inadequacy of the then existing hours regime.

Since the late 1990s driving hours have been regulated in NSW in accordance with a nationally coordinated approach to the issue. In 1991 State, Territory and Federal Heads of Government signed the Heavy Vehicle Agreement, which set up the National Road Transport Commission (NRTC) to oversee the introduction of consistent and uniform regulation of heavy vehicles across Australia (the role of the NRTC is examined in a later section). A year later the Heads of Government signed the Light Vehicles Agreement to expand the NRTC's regulatory responsibilities to all vehicles.

Figure 4: NSW Driving Hours Infringements 1994-1997



Source: NSW Police Infringement Processing Bureau reproduced in Croke, 1998 as Table 12.

In consultation with road freight and coach operators, unions and the road/traffic authorities of each jurisdiction, the NRTC developed uniform standards and regulatory frameworks to control fatigue amongst heavy vehicle drivers. While covering the overwhelming majority of long distance road freight haulage, two jurisdictions (Western Australia and the Northern Territory) were excluded from the arrangements. NSW implemented the national regulations in November 1998 with the relevant provisions being incorporated into the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999* under the *Road Transport (Safety and Traffic Management) Act 1999.* The national hours/rest break regulatory framework provides three options or alternative regimens, namely:

- A standard regime based on 12 hours 'driving' and 14 hours total work in 24 hours, and 72 hours driving per week. This option was similar to driving hours/rest regulation in NSW prior to the new national standard. Like earlier regulations, it required the keeping of a logbook (issued by the RTA) recording driving and rest periods by the driver (and which must be carried on the truck); although some effort has been made to address flaws in previous logbook systems. As in the past, the baseline requirement is that a logbook must be kept when a truck travels more than 100 kilometers on a single delivery point trip.

- A Transitional Fatigue Management Scheme (TFMS) based on 14 hours of driving or other work in 24 hours and 144 hours per 14 days. Again, this is still subject to the keeping of a logbook on the part of the driver. The TFMS was designed to legitimise a specific trip (Brisbane/Sydney) that requires 14 hours previously available under an enforcement moratorium by relaxing some core regulatory requirements (Moore and Brooks, 2000:3). As the name implies TFMS was intended as an interim measure to be replaced by full fatigue management schemes such as the Fatigue Management Program; and
- A Fatigue Management Program (FMP) that freed participating companies from compliance with prescriptive driving/work/rest limits and logbook requirements. In lieu of this participating operators must demonstrate both prior to entry and periodically thereafter that they have implemented a system that effectively manages driver fatigue. As yet FMP has only operated for several years as a very small pilot scheme in Queensland and other states.

To promote understanding of the new requirements amongst operators and drivers the RTA produced and distributed an audiocassette in addition to brochures and information placed on its web site. Driving/work hours and rest period requirements, or as the RTA prefers to call them 'duty and rest limits', are predominantly enforced via roadside audits of truck drivers' logbooks by RTA inspectors and the police. More recently the RTA has begun a trial of installing laptop computers in 10 inspection vehicles on the North Coast, enabling inspectors to access data from Safe-T-Cam (see below) so this information can be cross-checked against logbook entries. RTA inspectors also conduct office audits of operators where they have 'reasonable cause' to believe the limits are being abused (written submission, RTA page 7). The RTA uses offence patterns and Safe-T-Cam (a digital camera system at fixed sites that can identify trucks reaching a particular point for driving hours regulations would permitted. Safe-T-Cam is discussed below) to identify cases where a reasonable cause exists.

The Inquiry heard considerable evidence from a wide range of parties concerning inadequacies with logbooks as a method of monitoring driving hours. Inaccuracies and widespread flouting of the logbook system has been reported over many years (see for example Cairney, 1991:33). Criticism of the system presented to the Inquiry emanated from not unexpected sources such as drivers and transport companies where a degree of caution is warranted given a potential conflict of interests. Nevertheless, their arguments were often supported from other bodies. The NSW Branch of the TWU (written submission, page 12), for example, argued that their own experience indicated that driving hours regulations were poorly enforced and logbooks openly abused. In supporting this claim, the TWU referred to driver statements in the Hansard of the Australian Senate and Legislative Assembly of NSW, and Statutory Declarations of drivers and a WorkCover Inspector's report into Scotts Refrigerated Freightways Pty Ltd. The Inquiry was able to peruse copies of these documents and confirm their contents supported the union's contentions. For example, in his 1997 inspection report on Scott's Refrigerated Freightways WorkCover inspector Ron Keelty examined evidence from Safe-T-Cam, interviews with drivers, logbooks and manifests. Only after examining all these records (especially Safe-T-Cam) was he was able to determine that the logbooks had not been filled in correctly. Keelty concluded:

The company did not have any systems in place for ensuring employees and contractors who drive the company vehicles took the required rest breaks (WorkCover Investigation, Scotts Refrigerated Freightways, summary).

Keelty concluded that there was evidence of drivers working excessive hours contrary to RTA requirements. From the evidence compiled for the report he concluded that it appeared the company was not complying with s15 of the Occupational Health and Safety Act by failing to provide adequate supervision to ensure workers got adequate rest breaks. In his view, the evidence also suggested that the company was not complying with s16 by putting the

contractors it employed at risk by requiring them to work excessive hours (for a detailed discussion these general duty provisions, now section 8 and 9 of the amended Act, see Appendix 2).

The other evidence submitted by the TWU indicated that the situation at Scott's was by no means a rare occurrence in the industry. The TWU submission included copies of correspondence it had written to the federal Minister for Transport in September 1999 raising hours and other safety problems. The Canberra branch of the TWU provided driving time/trip detail summaries for individual drivers that indicated they were exceeding the required driving limits by a considerable margin and yet for which no logbook offence had been recorded. In general, the evidence provided by the TWU matched the thrust of many other submissions to the Inquiry from individual drivers, small operators and numerous others.

Further, criticism of logbooks also came from other parties and even unexpected quarters such as the submission of the Traffic Services Branch of the NSW Police Service, which stated:

For some considerable time one of the main areas of trying to monitor fatigue within the heavy vehicle industry has been the use of logbooks. The difficulties in this area have been well documented. A number of schemes have been developed and are being used in an attempt to overcome the problems that are associated with the use of logbooks. Each of these 'new' schemes presents their own problems to the enforcement officer. I have already alluded to the problems associated with FMP (see below).

A number of owner/drivers, operators and at least one transport association claimed that the more conservative approach to driving-hours regimes in NSW was actually a source of the enforcement problem given strong commercial pressures. Robert Gunning from the Livestock Association of NSW (oral submission) criticised the rigidity and rule-based focus of the NSW approach. He gave, by way of example, a trip that could be completed in 13 hours – one hour beyond the legal limit but safely in their view – with an appropriate 'catch up' of rest the next day. Given powerful commercial imperatives, he felt such tasks were likely to be undertaken irrespective of the regulation and advocated a more flexible but managed approach. He argued that regulators in NSW needed to adopt a greater sense of engagement in terms of relating enforcement processes to objectives (and not simply outcomes measured in terms of the number of prosecutions).

For its part, the submission of the Traffic Services Branch of the NSW Police Service raised concerns about the Fatigue Management Scheme as an alternative compliance measure.

The basic notion of this scheme is to attempt to educate drivers and owners to better manage fatigue on the individual. There are a number of concerns which are impacting on the ability of Police to carry out road safety activities in this area. In some instances operational Police are being approached by heavy vehicle drivers stating they are being forced into fatigue management schemes merely so vehicle operators can work them longer.

Each and every Fatigue Management Program differs from the next. The difficulty with this is that police do not know at what point the actual driver is within that daily, weekly, monthly program. Some drivers are permitted to work a number of seemingly long days. These may be up to 16 hours or longer. This is done on the pretext that other working days will be modified to accommodate these long days.

If a driver works outside the parameters of the scheme it is possible that this may not be discovered for months later, and only then as a result of some form of audit. The more complex the program the greater the difficulty of police to take pro-active action rather than a reactive response.

There is a common misbelief within the industry that because operators are in a Particular Alternative Compliance Scheme that is (sic) some kind of natural immunity to being stopped and inspected by Police. This is clearly not the case. Police take notice of the particular scheme which the operator may be in and usually do not carry out as rigorous inspection as might usually be the case. Some of the Alternative compliance schemes seemed to have stalled, in particular the Roadworthiness Scheme sponsored by the NSW RTA. Very little information seems to be flowing out of the RTA with regard to this scheme. This information is vital to the Police in the field. This allows them to monitor any companies or operators who may be trying to fraudulently represent themselves as being in a scheme.

The submission of a recently retired highway patrol police officer (with over 6 years experience working with the RTA on heavy vehicle enforcement programs) echoed these concerns. Pointing to the demonstrated effectiveness of well-planned and implemented enforcement programs in reducing road trauma, he expressed grave concern both at 'the horrifying practices of drivers in the long distance road transport industry' and at recent trends in compliance activity:

...front line operations need the support of senior staff particularly in securing adequate resourcing to maintain programs. It has been my experience, in the three to four years leading up to my retirement that less importance was being placed on road enforcement and an increasing emphasis was being placed on alternative compliance programs. Such programs, I am led to believe, have never been adequately monitored or evaluated.

My former RTA colleague continually expressed his concern over the lack of evaluation of alternative compliance programs and also his frustration at the lack of strategic direction in relation to effective enforcement programs (written submission recently retired NSW highway patrol officer).

It should be noted in passing that the Traffic Services Branch's concerns about information sharing and better coordination between various regulatory agencies generally was raised repeatedly by other parties in the course of this Inquiry and is examined in some depth in a later section of this Report.

Returning to the issue of enforceability, several other dimensions of this problem were raised repeatedly in the course of the Inquiry. One recurring point made was that the way the system currently operates has, by default if not by design, resulted in a driver-orientated focus that makes systems-based enforcement difficult. It is the responsibility of drivers to fill-in logbooks, making them the 'keepers' of the key document for assessing duty and rest hours. A number of operational police spoken to by the Inquiry expressed reservations about the way the logbook system placed the onus on the driver to keep the record, which they felt had real limitations given pressures frequently put on them by operators and clients. In addition to the problem of multiple logbooks already mentioned, it is comparatively easy matter for the logbook to bear little relationship to the hours actually worked. The Inquiry heard claims that some companies kept separate time sheets to calculate hours actually worked (a second set of records that were not made available to RTA inspectors during company audits - which appear fairly infrequent in any case) for payment purposes. In other words, the logbook might tally with company records but bears no relationship to what actually occurred (of course additional cross checking via Safe-T-Cam might assist in detecting breaches but even here there is problem in proving who was driving the truck at the time).

Further, if a driver is pressured to falsify their logbook either directly by the employer or indirectly by a customer-imposed schedule for enforcement to move beyond the driver requires either elaborate cross checking of multiple records (which has just been shown to be problematic) or the driver giving evidence. Yet as more than a few drivers told this Inquiry, they would be reluctant to give such evidence as they feared it would place their future

employment or work prospects in jeopardy. The Inquiry believes these fears are not unjustified. In addition to evidence already mentioned, the Inquiry received submissions from Queensland branch of TWU detailing cases (with names, dates etc) where drivers were threatened or dismissed for refusing to undertake trips that breached driving regulations and which they believed they were too tired to do safely. In another case, a NSW-based driver dismissed by a large transport operator because he complained it was requiring drivers to exceed their legal driving limits provided the Inquiry with an array of documents substantiating his claims. This driver claimed he has not been able to get work in the transport industry since this incident. Cases reported in the media (see for example *Courier Mail* 10 December 1999) or brought before industrial tribunals where drivers claim they were dismissed for refusing to exceeding driving hours hardly allays such fears (such as a Queensland case reported in *CCH Employment Law Update*, 1998:3). Overall, there were simply too many complaints or feared or actual dismissal for making complaints over driving hours for the Inquiry to accept that these practices are aberrant. This means that agencies like the RTA will find it hard to get drivers to testify to the sort of system-offences which almost if not all parties to this Inquiry agreed should be targeted. It should be noted in passing that the Inquiry heard evidence from an array of sources (including an insurance investigator) of similar intimidation where drivers complained about defective trucks, especially those working for small regional operators. The latter should not be taken to suggest that all or even most regional operators adopt this approach.

The problem of drivers as witnesses in 'up-the-chain' prosecutions is well-recognised by the RTA itself and applies not simply to driving hours offences but a range of other serious breaches/dangerous practices such as speeding and drug use (where there is also an issue of self-incrimination/indemnity). As coronial inquests such as the 1996 Blanchetown tragedy and evidence presented to this Inquiry amply demonstrate, systematic pressure to exceed driving hours can be informal (relying on 'understandings' of what is required amongst drivers, the tone and demeanour of managers etc) and difficult for an outside agency to establish. It also clear that, especially with small to medium operators, 'last minute jobs' may leave little in the way of a 'paper trail' and the increasing use of electronic tending etc can exacerbate this. Finally, the penalties that would normally apply to a system-offence even if drivers were prepared to testify are not of an order likely to change practices within the industry. It is to this point that attention now turns.

A recurring criticism of the logbook regime was the deterrent value of fines imposed for offences. This criticism had two components. First, it was suggested that the size of fines was insufficient to match either the gravity of the offence (given the potential consequences). Second, it was claimed that logbook offences of very different consequences might attract the same or similar level of fine, thereby sending both an ambiguous message to the industry and, worse perhaps, encouraging the committing of one kind of logbook offence over others. After considering the evidence presented to it, this Inquiry is of the view that both these criticisms have considerable substance.

Again, at least the first of these problems was not confined to NSW. In its written submission (page 21) Queensland Transport noted that the fines applicable for logbook and driving hours offences ranged up to a maximum court fine of $1500 for individuals and $6,000 for corporations (not all offences carried these penalties) while a Penalty Infringement Notice (PIN) fine is $240. Queensland Transport conceded the deterrent value of this penalty regime could be questioned and indicated a solution being currently investigated:

In many cases, the fines may offer little disincentive to recalcitrant operators and little incentive to enforcement officers to go beyond issuing a PIN (ie investigating the new 'chain of responsibility' provisions of the regulation). There are no demerit points attached to these offences in Queensland, however, plans are underway to investigate the feasibility of

introducing demerit points for fatigue related offences (written submission, Queensland Transport, page 21).

Another criticism of the logbook system is that existing regulations only require a logbook to be kept where truck drivers undertake a single trip of 100 kilometers or more from their depot. The problem here, as mentioned in an earlier section of the report, is one of omission. Local 'drop-off' or other short journeys taken before or after (but especially before) a long trip are not recorded in the logbook, thereby giving an understated and misleading impression as to actual driving hours. The number of submissions to the Inquiry that raised this issue indicates that it is a significant problem and many of these suggested the omission was being systematically exploited by some consignors, freight forwarders and operators. The Inquiry was supplied with information on situations where the regular work arrangements involved long hours that clearly breached the driving hours legislation but for which no formal offence could be identified in logbook records. One case (from an independent source) involved a driver doing two return trips between a regional town and Sydney (under 100 kilometers apart) finishing late Monday and leaving early the next morning for a long trip to destinations in Victoria, Queensland or South Australia with a return on late Wednesday. On Thursday and Friday this cycle, or some variation of it was repeated. In this case the logbook would report around 48 hours of driving even though the actual hours spent driving that week were at least 80 hours. This is a serious problem that the current enforcement regime fails to cover and highlights the need for a more effective recording of driving/working hours.

Another issue raised in relation to the enforcement of driving-hours regulations was in connection to the stopping of trucks being driven by fatigued drivers. Several police giving evidence expressed the view that in the immediate interests of public safety the most appropriate remedy for instances where they detected an excessively fatigued driver was to order the truck to halt until driver either had adequate rest or a replacement was provided. The numerous submissions from a wide range of parties (including drivers themselves) of instances where trucks were being driven erratically (wandering over the road etc) by apparently fatigued drivers. The current Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999 empowers authorised officers to stop or ground a vehicle. Clause 130 gives an authorised officer the power to stop a vehicle to complete inquiries about compliance with this Regulation. Clause 137 gives an authorised officer the power to direct a driver not to drive until sufficient time has elapsed to allow the person to drive without contravening the driving fatigue Regulation. While these regulations would appear to give police the power to address the situation of a fatigued driver, concern was expressed at the potential civil liability implications of ‘grounding’ a truck carrying a perishable load that might sustain considerable damage during the period of delay. It could be argued that a load owner or transport company that fails to provide a safe system of work has no right to expect special dispensation just because the load carried is perishable (rather this aspect should have been factored into arrangements for delivering the freight). It should also be noted that the powers to stop and temporarily ‘ground’ vehicles for reasons of driver fatigue or other safety issues (see the discussion of overloading and load restraint offences below) finds a ready parallel in the powers of WorkCover inspectors to issue prohibition and improvement notices.

In the view of this Inquiry, the issue of civil liability should be clarified and if a problem exists it should be addressed. Police and RTA officers first priority is to safeguard road users not freight, and making this clear by ‘grounding’ unsafe drivers or trucks will provide an additional economic incentive to ensure delivery arrangements do amount to a safe system of work. At most, a workable system may require to authorised officer to notify the load owner or transport company so that alternative arrangements (such as supplying another driver) can be made. A method of achieving this is proposed later in the Report.

Conclusion

There are serious problems with existing enforcement practices in relation to driving hours. The logbook system used in conjunction with regulated hours has long been abused and recent efforts to counter this (including the use of Safe-T-Cam surveillance) appear to have had limited success. The prescriptive regulated hours approach takes no account of circadian rhythms or the actual time when driving occurs, as well as a number of other factors that are relevant to fatigue management. It needs to be noted that problems of enforcing the logbook regime are due in no small part to the commercial practices described in the previous section of this Report. During the course of its investigation, the Inquiry was repeatedly told by drivers that delays in loading and unloading, for example, put them in position where they felt pressured to evade Safe-T-Cam surveillance points. They also complained that, because the prescriptive regime, took no account of their body clock, there were situations where they were entitled to drive but wanted to sleep and vice versa. The second of these criticisms need to be treated with some caution, as the logic of a system dependent on driver's perceptions of tiredness might be more dangerous than one where hours are prescribed, especially given the pressures drivers are under.

The introduction of a more comprehensive and flexible approach to fatigue management such as the Fatigue Management Program (FMP) and the code-based schemes now operating in Western Australia and the Northern Territory (both examined in some detail in a later section) would seem to avoid some of these issues. However, both options are in their early stages (the FMP is only a pilot scheme) and require careful assessment. At least in the case of FMP, the scheme requires a deal of commitment and planning on the part of operators that is by no means a characteristic feature of the industry. Despite well-recognised problems with the prescriptive approach, there is reluctance on the part of regulators to move into alternative regimes. Reasons for this include a lack of confidence in or applicability of alternative approaches, widespread public concern at the operating practices of the long haul trucking industry, and the problem of using on-road enforcement in relation to alternative compliance schemes (Moore and Brooks, 2000:5-6). For example, although the Queensland pilot of FMP has been operating over five years the number of transport operators involved remain small. This Inquiry also pointed to evidence that the existence of multiple schemes was causing confusion amongst police engaged in highway enforcement. In the view of this Inquiry it is extremely unlikely that these concerns will be ameliorated until a number of underlying problems are addressed, particularly the strong commercial pressures to evade regulations, however these are constructed.

Irrespective of what regime is in place for regulating hours/managing fatigue there is an urgent need for a more reliable recording system for working and rest hours in transport industry that can be used by regulators, operators, clients and others. Very few defended the current logbook system and many individuals and organisations (such as WorkCover NSW, written submission at page 17) urged that a better replacement be considered. What is needed are records of hours worked and rest taken that are created by cross-matched between the major parties, establish a clear and easy to follow audit trail to both detect breaches and to form the basis for prosecution, especially in the case of systematic offences. There was significant support amongst a wide range of parties for a trip-based document to replace the logbook amongst both drivers and some of those involved in enforcement. It could form the basis for both on-road and off-road enforcement processes. A police coordinator (oral submission) expressed frustration at not being able to ask for information that would enable them to verify scheduling arrangements:

Unfortunately, we can't say to a driver "can we see you planned schedule?" In other words, the company would say to the driver "here is your planned schedule, you start work at five in the morning…" Its very easy to do a time/distance study to say that… "your meal breaks at 12 o'clock, you unload in Sydney at three o'clock in the afternoon, your down time is from here to here, and then you start the next day at this time."

The police officer (with over 20 years experience in highway enforcement) believed a trip-based document that gave a more accurate picture of hours worked etc was and was filled in by the operator (thereby placing the onus on them) would be a superior option. The idea of trip-based safety documents was proposed in National Road Freight Industry Inquiry (May et al 1984). This Inquiry is of the firm view that a relatively simple trip-based document could provide the basis for more effectively regulating driving hours, scheduling and a range of other safety related matters. This matter is addressed in the recommendations.

The recent federal Inquiry into fatigue in transport (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:34) recommended that driving-hours regulations should be amended to incorporate time of day considerations and increasing minimum allowable rest periods. These recommendations are consistent with concerns raised in this Inquiry. This Report would suggest that these two issues could be readily accommodated in a trip-based document covering driving hours and other safety matters.

4.2 Speeding

As an especially hazardous practice, speeding by long distance trucks has been the subject of an array of enforcement measures. Most of the measures about to be described are used in all States and Territories of Australia (the rigor with which they are pursued varies between jurisdictions, however) although there are some exceptions in relation to the three strikes system and Safe-T-Cam (the latter is confined to NSW).

At the proactive preventative level, since 1991 all vehicles over 12 tonnes GVM must be fitted with speed limiters and those below this weight may also be required to fit a speed limiter if detected speeding under the three strikes program (see below). While this technical intervention might seem to pre-empt the problem as noted elsewhere in this Report the incidence of speeding by heavy vehicles is not only high but it appears to be increasing in recent time. The Roads and Traffic Authority of NSW (RTA) has drawn the conclusion from this that tampering with speed limiters is widespread – something that may or may not be condoned by vehicle operators (written submission, RTA page 7). This view was shared by the NSW Road Transport Association, which represents trucking operators.

The speed limiter program seems to have run its race. It is all too common now to see speed limited vehicles exceeding the designated limited speed by 15% to 20%. This is unacceptable, yet how is it to be enforced? A regular audit program would assist, but the real answer would be some exposure of the offender following a prosecution (written submission, NSW Road Transport Association, page 17).

In the course of investigation oral and written submissions were received from drivers and those with a close knowledge of the industry that tampering was not uncommon and a series of methods were described as to how this could be achieved. Methods described included fitting the truck with smaller wheels when the limited was fitted or recalibrated and disabling switches disguised as radio buttons etc (so the limiter could be turned on and then off if the limiter was being tested) to name but a few. It needs to be noted that even when properly fitted, a speed limiter may not prevent a truck exceeding the speed limit down an incline or travelling a few kilometres per hour over the limit on the flat. However, allowances for this do not materially affect the evidence on excessive speeding by heavy vehicles including material supplied by the RTA and others presented to this Inquiry.

It has also been alleged that some companies have sought to evade the speed limiter (and driving hours) regulations by using trucks 11.99 tonne GVM trucks which fall outside the 12 tonne 'kick-in' point for these requirements (written submission, Victorian Road Transport Association). How widespread this practice has been is unknown but it may warrant some investigation by regulatory agencies.

Evaluating the available evidence, the Report concludes that manipulation of speed limiters is widespread but this does not indicate they should not continue to be employed. Rather, in conjunction with other measures proposed to deal with speeding offences, there needs to be both targeted and random auditing of vehicles (including blitzes on particular routes). Operators found to be committing offences in this area should be prosecuted and efforts made to publicise the identity of those convicted so the public shaming and the risk of losing contracts to customers becomes an additional deterrent.

Beyond attempts to directly prevent speeding a range of more reactive measures are used to detect and impose an array of penalties on speeding trucks. Speeding offences are detected via a range of methods, including mobile police patrol along highways using radar and other detection devices, fixed and portable speed cameras and the Safe-T-Cam system. As in other Australian jurisdictions, primary responsibility for the detection of speeding by trucks rests with the Police Service although the RTA operates Safe-T-Cam and has recently taken responsibility for the installation and maintenance of fixed electronic (ie using digital technology) speed cameras. According to the RTA, fixed unattended cameras are currently installed at 21 locations including the Burringbar Range section of the Pacific Highway in far north NSW as well as urban locations such as the Sydney Harbour Tunnel and Eastern Distributor. The cameras are located at sites with a history of speeding and crashes. While some of the measures just described are part of the general strategy on road safety targeting all road users, two were developed by the RTA as a specific response to community concerns about speeding heavy trucks. Safe-T-Cam and the Three Strikes and You're Out program specifically target the owners and operators of heavy vehicles. To this might be added the Culway scheme described earlier in this Report that although not directly used for enforcement, does assist enforcement strategies by identifying the extent of illegal practices on particular routes.

The remainder of this subsection will examine the nature and effectiveness of the measures just mentioned in turn.

4.2.1 General enforcement practices by the NSW Police Service

Police activities to enforce traffic laws, including speeding by heavy vehicles, is coordinated by the Traffic Branch of the NSW Police Service. Across the State of NSW there is a network of regional police commanders in charge of highway patrol vehicles that are responsible for monitoring particular (and often very large) stretches of highways and other major roads used by heavy vehicles.

In its submission, the Traffic Branch of the NSW Police Service pointed to a recent increase in the number of infringement notices but argued commercial pressures already discussed in this Report were increasing both the tendency to speed as well as efforts to evade existing enforcement measures.

In 1998 there were some 6,767infringement notices issued to heavy vehicles for speeding offences. In 1999 that figure rose to 8,644, speeding is a symptom of the inability of some sections of the heavy vehicle industry to set realistic schedules. There is evidence provided from police in the field that the incidence of speeding is becoming more frequent. Sections of the industry deliberately schedule timetables to coincide when the least on road enforcement will be encountered. Additionally the ability of speed limiters to either be bypassed or not used at all is becoming more apparent. In one Police Region alone some 200 Radar detectors have been seized from the drivers of heavy vehicles in a 12 month period (written submission, Traffic Services Branch of NSW Police Service).

Police operations that might be effective against most road users confront particular problems in relation to long haul trucks. The use of radar detectors continues to be a problem in connection to the long distance trucking industry even though its use by car drivers largely disappeared when such devices were deemed illegal. Further, unlike cars each truck is equipped with a radio which drivers use in addition to other means (such as meeting at truck stops, rest areas etc) to maintain a highly developed network for exchanging information. As the NRMA observed:

Speeding trucks are caught by normal police speeding operations although anecdotal evidence suggests that the position of any police operation is quickly broadcast through radio so that other drivers are not caught (written submission, NRMA).

In fact, evidence of such practices is not confined to NSW and is more than anecdotal. In its written submission (page 6), Queensland Transport stated that Queensland Transport and Queensland Police Service vehicles:

...are equipped with UHF/VHF radios which are able to pick up vehicle to vehicle communications. Using this equipment, Government officers have established that elements of the transport industry use their in-vehicle communication systems to share information about the location, movement and activities of enforcement officers and often monitor the start and finish times of Transport Inspectors and Police in more remote areas. This gives those who are operating outside the legal requirements the ability to avoid detection. This is particularly critical in rural/remote areas where there are few enforcement officers covering a large work area.

An experienced highway patrol officer from southern NSW (oral submission) pointed to a similar problem in relation to combined (NSW and Victorian) police blitzes on the Hume Highway, and in doing so highlighted how, in his view, scheduling pressures contributed to systematic evasion.

We find that if there is concentrated enforcement within our region, the southern rivers region, or us and an adjoining region, you find you get quite a high level of compliance in that enforcement zone. But what happens is, because of schedules or whatever, we find that outside that, those drivers that have got a tight schedule or are behind ... use the other areas where there isn't the enforcement level that is conducted elsewhere. They pick up time and speed in other areas to make up for the restriction in the enforced area.

Some drivers interviewed by the Inquiry made an essentially similar point in relation to Safe-T-Cam. For example, a Victorian based owner/driver (oral submission) stated:

Safe-T-Cam because it is only in NSW, means that speeding trucks are more prevalent now in Victoria and Queensland, states without Safe-T-Cam, because that's where they can make up the time.

There were also suggestions from drivers that there was a margin of tacitly permitted speeding (ie over the 100 kph limit but below 110 kph) before a truck would be booked in some jurisdictions (Victoria was mentioned) but not NSW. The Inquiry is unable to assess the validity of this observation, although inconsistency in enforcement practices would present a problem.

It should be added here that it was suggested to the Inquiry by a range of sources that at particular time there might only be one highway patrol vehicle operating on the Pacific Highway between Newcastle and close to the Queensland border (a distance well in excess of 500 kilometers). If this is the case, then it would be comparatively easy for truck drivers to notify colleagues of the approximate location of the patrol car. Indeed, even if two, three or

perhaps even four patrol cars were operating on this stretch regular communication would still enable trucks to speed for considerable periods with some impunity.

4.2.2 Safe-T-Cam

Safe-T-Cam represents an attempt to bring sophisticated technological surveillance to the arena of enforcement in long haul road transport. It was developed under an agreement between Telstra, CSIRO and the RTA (at least one alternative system was examined but rejected), and is administered by the latter Safe-T-Cam is an automated monitoring system using digital camera technology located at 21 sites on the main transport routes in NSW. Employing a real time system, cameras take picture of heavy vehicles (over 4.5 tonnes GVM), locating and deciphering their number plates, and determining not only speed but also registration status and whether a heavy vehicle is travelling beyond prescribed hours. Speeding violations and travelling beyond prescribed hours (ignoring the possibility of a change of driver) can be determined by comparing sighting data from two or more Safe-T-Cam sites that a particular vehicle has travelled through. Once an apparent violation is detected the vehicle operator is sent a letter requesting an explanation and statement of what actions will be taken to prevent a recurrence. If the response is deemed unsatisfactory or if further violations occur the RTA may undertake an office audit or review the operator's right to operate vehicles in NSW (written submission, RTA, page 8). The latter sanction would seem to have real deterrent value given its direct and potentially significant impact on the operator's business.

In the period to early 1999 a total of 7658 operators (or 80% of the total issued notices) had been sent one speeding notice, 1320 operators (or 13%) had been sent two notices, 396 (or 4%) three notices and 294 (or 3%) four or more notices (*PrimEmoves*, March 1999:1). Consistent with this, in its submission the RTA noted that 80% of those receiving a warning letter did not re-offend. In the past year 16 operators had been asked for reasons why they should continue to operate vehicles in NSW, with two NSW and 11 interstate operators being suspended. Another seven operators were currently under review with a view to possible suspension. At the same time, the RTA identified some problems in relation to Safe-T-Cam's effectiveness as a tool of enforcement as well as efforts to remedy them.

It should be noted that Safe-T-Cam sanctions can only be applied to vehicles registered in NSW or another State. Sanctions for Safe-T-Cam violations cannot be imposed on operators with vehicles registered under the Commonwealth Federal Interstate Registration Scheme because of deficiencies in the legislation…

There is an element of the industry that deliberately attempts to avoid detection through a range of avoidance behaviours. These include tailgating at Safe-T-Cam sites, turning lights off, travelling in the breakdown lane and using bypass routes. Enforcement resources are deployed at Safe-T-Cam sites to detect avoidance behaviour. Any driver detected attempting to avoid the system has their right to drive in NSW reviewed by the RTA. Over the last 12 months over 130 drivers have had their privileges reviewed for both excessive speed and avoidance behaviour. 34 NSW drivers and 85 interstate drivers have had their privileges suspended (written submission, RTA page 9).

The deficiency in relation to federally registered vehicles applies equally to the Three Strikes and You're Out program and will be elaborated upon in the subsection dealing with it. At this point it is enough to observe that providing for effective enforcement across jurisdictional boundaries is a serious issue and one referred to by a number of large transport operators (see for example, written submission, R Angus, Boral Transport).

There was a fairly wide base of support for Safe-T-Cam, though much of it was qualified. Amongst industry groups, the NSW Road Transport Association labelled Safe-T-Cam as an

excellent idea with wide industry acceptance but whose potential was yet to be fully realised because legal impediments had prevented decisive action being taken against all offenders (written submission, NSW Road Transport Association, page 17). A number of individual transport operators, especially medium to large firms, endorsed Safe-T-Cam, as did submissions from motoring organisations and other bodies.

Speeding trucks are also identified by through the Safe-T-Cam system, which was expanded last year to cover most of the major highways in NSW. This is a highly effective system to measure speed and driving hours infringements and strategies to expand its use would be welcomed by NRMA (written submission, NRMA).

Safe-T-Cam also had support from industry associations, companies and other parties outside of NSW, with the Victorian Road Transport Association (written submission) calling for it to be expanded into a national system covering all major routes to address both speeding and fatigue monitoring. Similarly, a Queensland based operator urged that the number and location of Safe-T-Cam sites be increased and cover the whole nation (written submission, Nolan's Interstate Transport). A major reason for support for Safe-T-Cam amongst both industry associations and predominantly medium to large operators was their belief that it helped to establish a level playing field by capturing those who sought to gain advantage by evading safety regulations. At the same time, significantly increasing Safe-T-Cam coverage was seen as crucial to this.

The submission (page 8) of the insurer NTI Ltd also endorsed Safe-T-Cam as a progressive step but queried whether its present mode of use assisted or hindered fatigue management:

Frequently, operators have reported to us that the cameras make no allowance for loading and unloading inefficiencies and subsequent delays. Has the technology influenced the desperation? What price do we pay for an industry put under even more stress?

Oral submissions from drivers and some small fleet operators made an essentially similar point, claiming that the need to catch up to pass through Safe-T-Cam site at the 'right time' actually encouraged hazardous practices. Of course, this begs the question as to whether it would be better to address the loading delays and other factors that are the original cause of this pressure. As already noted above, one response to Safe-T-Cam that may be seen to simultaneously illustrate its effectiveness but also its limited coverage, was the claim by drivers that they speeded up in Victoria and Queensland in order to make up the time lost due to Safe-T-Cam surveillance in NSW. At one level, these claims provide support for those calling for an extension of Safe-T-Cam to other jurisdictions. At the same time, the underlying scheduling pressures mentioned in connection with this behaviour makes it also likely that such an extension would induce new forms of evasion – something that the history of industry indicates some operators are all too adept at finding. Indeed, the Inquiry received a large number of oral and written submissions attesting to practices already in use to evade Safe-T-Cam (including tailgating and taking evasive routes). This evidence does not contradict the argument that Safe-T-Cam has encouraged speeding in areas beyond its reach – it simply highlights the diversity of evasive responses to the system.

By no means all those making submissions to the Inquiry were convinced of the effectiveness of Safe-T-Cam, with frequent references to various measures used to evade the system. Those to point to these problems included the Traffic Services Branch of the NSW Police Service, whose written submission included the following observations:

Safe-T-Cam has long been heralded as a tool, which will be used to combat certain practices within the heavy vehicle industry. Some of those practices have been that of driving extended hours as well as speeding. The location of Safe-T-Cam sites within NSW are well known. The incidence of avoidance of these sites based on information in the field is increasing. Practices

of driving through these sites with headlights turned off, crossing to the incorrect side of the road to carryout various avoidance manoeuvres, heavy vehicles tailgating each other as well as devices that can be activated to hide number plates of offending vehicles are just some of the practices being employed. A number of operators take alternative routes to go around Safe-T-Cam sites.

As noted above, the RTA has taken counter measures to address a number of these problems. Though not without effect, the overall impact of these measures was challenged by some making submissions, including an ex RTA inspector, and warrants further investigation.

Safe-T-Cam was also the subject of trenchant criticism from the TWU. The NSW Branch (written submission, page 19) argued that despite assurances its use in conjunction with the three strikes program (discussed below) would apply to the full transport chain including operators, consignors and clients it had become 'just another stick to beat the driver with'. There is substance in this criticism, although in fairness to the RTA it should be noted that it has encountered problems here not of its own making (see below). Further, WorkCover's use of Safe-T-Cam records to cross-check against logbooks and company records in the Scotts Refrigerated Freightways case described above illustrates the potential to use Safe-T-Cam in up the chain prosecutions. Unfortunately, this potential is yet to be realised. It provides evidence for a more co-ordinated approach by regulatory agencies using a mix of available remedies. This issue is taken up at greater length later in the Report and forms the basis for some important recommendations of the Inquiry.

4.2.3 Three Strikes and You're Out

Another important enforcement initiative was the introduction of the 'Three Strikes and You're Out' program (hereafter referred to simply as the three strikes system) in July 1998 with the support of the road transport industry, to reduce speeding by heavy vehicles. The system addresses operators as well as drivers and is targeted at operators of heavy vehicles detected by the Police Service travelling at over 115kph. It involves a graduated range of sanctions for both speed-limited and non-speed limited vehicles. A first offence of a speed-limited vehicle results in a warning, a second offence the calibration of the speed limiter, a third offence leads to a 28 day suspension of the vehicle's registration while fourth and subsequent offences each result in a three month suspension. For non-speed limited vehicles the first offence leads to a warning, a second offence to the fitting of a speed limiter, a third offence to calibration of the limiter, a fourth offence results in a 28 day suspension of vehicle registration and subsequent offences each cause a three month suspension. By addressing operators as well as drivers, and by suspending the registration of the offending vehicle and in so doing affecting the earning capacity of the operator the three strikes system would seem to provide a more effective deterrent than simply issuing speeding fines. This especially the case given suggestions that some companies routinely pay fines or that some drivers are prepared to forego fines when they balance this against bonus/penalties which may apply to delivery schedules or the risk of missing a load in the case of owner/drivers.

The three strikes system has been adopted in a number of jurisdictions and has the strong support of bodies like Queensland Transport (written submission, page 10). It also commands strong support from a number of bodies, including industry associations. The ATA, for example, saw it as a method for dealing with unscrupulous operators and driving the 'cowboy' element out of the industry, something which heavier penalties on drivers were unlikely to achieve:

...the industry realised that drivers should not bear the full brunt of increased penalties when in some instances they may have been pressured by their employer or consignor to do so (written submission, ATA page 19).

As at 25 May 2000 1571 speeding offence 'strikes' had been recorded by the RTA in NSW, with 63% of detected vehicles travelling at 120 kph (exceeding the speed limit by at least 20 kph) and about 12.5% travelling at 130kph or more (written submission, RTA). Of these (1571) offences 267 (or 16.9%) were recorded by NSW registered trucks. Of the remainder, 740 (47.1%) by federally registered (FIRS) trucks, 355 (22.6%) by Victorian registered trucks, 87 (5.5%) for both Queensland and South Australian registered trucks, 18 (1.1%) for ACT registered trucks, 9 (0.6%) for Western Australian registered trucks and 4 (0.3%) for Tasmanian registered trucks. Several things are apparent from these figures, including the relatively low detected offence rate for NSW registered trucks given the number of vehicles based in this state. However, most striking by far is the significant number of offences (almost half) incurred by federally registered trucks even though they comprise only about 2% of the national heavy vehicle fleet. Two FIRS trucks also held the dubious distinction of recording the highest speeds (152 kph or more than 50 kph over the speed limit on the Hume Highway at Mittagong). The Federal Interstate Registration Scheme (FIRS) provides for registration of vehicles involved in interstate trade (though by no means all), and is administered by the federal government, with each state acting as its agent. The Report will return to the issue of federally registered vehicles shortly.

Table 27: Breakdown of the registration of vehicles that have recorded 'strikes' in NSW

	NSW	FIRS	ACT	QLD	SA	VIC	WA TAS	NT
No. of offences	267	740	18	87	87	355	9	4
% of total	16.9	47.1	1.1	5.5	5.5	22.6	0.6	0.3

Source: written submission, RTA.

In its own assessment the RTA finds the three strikes system hard to judge, noting that for one thing it depends on the effectiveness of detection (ie the probability of being caught) and in relation to this there were some worrying trends.

An analysis of the '3 strikes' data showed that the number of speeding incidents reported by Police for January to April 2000 was down 40% from the same period last year. Analysis of RTA speed data from Culway sites shows that there has been an increase in the incidence of speeding heavy vehicles.

Increased Police activity does not guarantee reductions in the incidence of heavy vehicle speeding. Speed survey data (7 day, 24 hour/day surveys), from three sites on the section of the Hume Highway where there had been significant enforcement of the '3 strikes' scheme by Police (Goulburn to Sydney), has been analysed. The analysis revealed that even on this section of the highway, the percentage of heavy vehicles speeding remain very high (50-70%) and had increased since the implementation of the '3 strikes' scheme. The increase was, however, less than at the Culway sites. There was a slight decrease in the Goulburn area (written submission, RTA).

There is need for caution in interpreting evidence in relation to one route (albeit the busiest and very competitive Sydney/Melbourne corridor) and trends over such a limited period of time. Nevertheless, the observations are consistent with other evidence presented to the Inquiry that the speeding problem is not improving and may well be getting worse, and that

some elements of the industry are becoming more adept at evading enforcement. Along with other measures, the three strikes scheme is failing to have a clearly demonstrable effect (which is not to say the situation may not have been even worse had it not been for the scheme).

In addition to the probability of offences being detected, the certainty of punishment once an offence has been detected, and the imposition of penalty that actually influences offender behaviour in the desired direction are critical elements in an enforcement regime with genuine deterrence value. While the three strikes system would seem to meet these elements in principle, in practice there have been some major problems and again FIRS registered trucks figured heavily. In its written submission (at page 10) the RTA asserted:

The key problem with FIRS is that the scheme restricts the action that can be taken against the operators of vehicles registered under it. Suspension of a vehicle registration must be undertaken by the State in which the vehicle is registered not the State in which the offence occurred. As the '3 Strikes' system is not applied uniformly by all States, operators can avoid sanctions by registering in Jurisdictions where the system does not currently operate thus limiting the effectiveness of the scheme as a whole.

Recognition of this problem extended beyond the RTA to other parties such as the ATA who observed:

The speeding trucks legislation has been embraced especially by NSW however, in a nationally consistent approach, it appears not all other state authorities are taking this legislation to the full limit (written submission, ATA page 19).

The RTA pointed to another evasion device that while not restricted to operators with FIRS trucks, was easier for them to avail.

The sanction applied to operators under the '3 Strikes' scheme is the suspension of their vehicle's registration. To avoid this sanction heavy vehicle operators can transfer the registration of the vehicle to another entity such as their spouse or subsidiary company, prior to suspension action taking place. Under the current regulations the transfer cannot be prevented because there is no reason to suggest that the person/company to whom the vehicle is being transferred is 'not a fit and proper person to be the holder of the registration of the vehicle'. It should be noted that for non-FIRS vehicles stamp duty is paid on the transfer. This would be $7,000 on a typical prime mover. Stamp duty is however not paid on FIRS registrations. So, as happened recently, a FIRS operator can transfer the registration of their vehicle to avoid sanction at virtually no cost.

The NSW Minister for Roads has written to the Federal Minister for Transport and Regional Development on a number of occasions asking the Commonwealth Government to either honour its commitment to repeal FIRS legislation or make provision for States such as NSW to take direct action against offending operators. However, the Commonwealth has not taken the necessary action (written submission, RTA pages 10-11).

A virtually identical concern was raised by the submission of the Traffic Services Branch of the NSW Police Service:

There is a very large loophole in the legislation that allows Federal Interstate registered vehicles to thwart both Safe-T-Cam provisions as well as the 3 Strikes legislation. Information from operational police indicates that the 3 strikes legislation seems to have little affect on FIR's vehicles at all.

The greater tendency to speeding amongst federally registered vehicles appears to be a long-term problem. In their 1989 pilot survey Hensher and Battellino (1990:552) found that federally registered vehicles had average trip speed 11kph faster than the average for all other trucks and the gap was even greater when compared to trucks registered in NSW. The Inquiry heard some submissions claiming that the enforcement problems in relation to FIRS trucks did not simply relate to speeding but also included logbook/driving hours offences. The TWU (oral submission, Michael Kane), for example, claimed there was a problem in relation to both checking and falsification of logbooks carried by FIRS trucks. However, some drivers suggested that a general decline in the level of logbook inspection outweighed any differential treatment accorded to FIRS trucks.

In summarising its position, the RTA was quite emphatic:

There is a need to ensure all trucks operating in NSW are subject to its laws – there is an urgent need to dismantle the Federal Interstate Registration Scheme which is currently providing a shield for unscrupulous operators against NSW road transport law (written submission RTA executive summary).

It is the view of this Report that federally registered vehicles constitute a problem far beyond their number both in the commission of speeding offences and their capacity to evade punishment which other transport operators, especially those with vehicles registered in NSW, must bear for behaving in a similar fashion. The Inquiry regarded this as an extremely critical issue that undermined the legitimacy of the enforcement regime, and was going to recommend that further urgent action be taken to address it. However, just prior to the completion of this Report the Inquiry learned from the RTA that the federal government is in the process of making the desired changes and has consulted with the RTA in developing these amendments.

Notwithstanding this belated but welcome measure, the prolonged misuse of FIRS as a means of regulatory evasion is one of a number of issues that have cast a shadow over the push of a more coordinated nationally administered safety strategy in relation to long distance trucking. The Report will examine the question of national coordination in greater depth in a later section.

4.2.4 Conclusion

Speeding trucks are not an isolated problem, and as with regard to other hazardous practices such as excessive driving hours regulatory agencies have had to confront sometimes quite elaborate attempts to evade their enforcement measures. During the 1980s evidence of widespread speeding (one NSW study of articulated trucks found over 80% exceeded the then 80kph limit and 15% of these were travelling in excess of 100kph. Cited in May et al, 1984:184) was used to argue that a more 'realistic' speed limit was warranted. Even ignoring the short-term effects of the resulting changes, a more sober assessment of truck speeding is that speeding remains pervasive because the intense competition for work, scheduling pressures, unpaid loading/unloading time, and incentive/task-based payment systems encourage such behaviour.

4.3 Drug use

In its written submission (at page 11) the RTA pointed to an array of alerting/stimulant drugs being used by long distance truck drivers. These included slimming pills/appetite suppressants (such as Phentermine and Diethylpropion with the trade names Duromine and Tenuate respectively which were both available only on prescription). Another obvious set was caffeine (as found in coffee, cola drinks and NoDoz) and pseudoephidrine (used in many medications) that could be legally obtained. Finally, there are illicit drugs such as

Amphetamine, Methamphetamine and MDMA ('ecstasy'). The RTA noted that, with the exception of caffeine and pseudoephedrine, it was an offence to drive a vehicle in NSW under the influence of any of these drugs (*Road Transport [Safety and Traffic Management] Act 1999* Division 2 and Schedule 2 of the *1999 Road Rules Regulation*). Referring to the enforcement of these provisions, the RTA stated:

Under Division 5 of the Act, police have the power to test a driver who appears to be under the influence of a drug at the roadside. If a test for alcohol is negative, the police officer can require the driver to undergo a drug assessment. If the police officer forms the opinion that the driver is under the influence of a drug, he or she has the power to arrest the driver and take him or her to a designated hospital where a blood or urine sample is taken by medical staff. Those samples are sent for analysis at the Health Department's Division of Analytical Laboratories. The results of the analysis and the police officer's report are considered by the Police Service pharmacologist who decides whether the driver should be prosecuted for driving under the influence of a drug.

Provisions also exist under Division 4 of the Act to allow police to have a blood sample taken, in certain circumstances, from a crash-involved driver to be analysed for the presence of a drug.

Police prosecute truck drivers for driving under the influence of stimulant drugs. It needs to be acknowledged, however, that it is much more difficult to detect a driver who is under the influence of a stimulant than one who is under the influence of a depressant, such as alcohol at the roadside. This is because stimulants do not usually produce overt signs of impairment when used in moderation. When RTA IVRs encounter a driver who appears to be under the influence of a drug, they call for police assistance (written submission RTA page 13).

Operational police who gave evidence to hearings of this Inquiry echoed the caveat about the difficulty for police in enforcing this law. Further, in relation to post-crash investigations it should be noted that the Inquiry heard evidence that tow truck operators routinely offered to remove drugs or other potentially incriminating material (such as guns) for the driver from the truck cab at a crash site.

A number of submissions highlighted the difficulties of implementing an effective enforcement regime in relation to drugs, especially where the underlying reasons for drug use in the industry were not addressed. For example, the NRMA observed:

This is a difficult problem to deal with because roadside drug testing regimes are presently cumbersome and inaccurate, the specific impairing effects of drugs are difficult to identify and vary with different drugs, and the connection between detected drugs and the impairment level over time since the drug was taken is unclear. Again, the most effective form of 'enforcement' of this issue may lie with companies. Those which schedule realistically do not pressure drivers to take risks, and are proactive with driver health issues are far less likely to have drivers infringing driving hours, speeding or taking drugs to stay awake. Another approach could be for the appropriate regulatory body to establish a taskforce including regulators, Police, the industry, unions and others to further investigate drug problems in the industry and suggest strategies to deal with the problem (written submission, NRMA).

As noted in Section 1 the NSW Police Force has also targeted drug supply points, with the most recent success being the major raid on a drug manufacturing/supply center in Western NSW at Peak Hill. Such activity is by no means new. Police spoken to in the course of the Inquiry referred to raids on service stations near Gundigai supplying 'speed' in the early 1980s. However, such activity appears sporadic. Notwithstanding the apparent success of the Peak Hill operation (which involved elaborate electronic surveillance that enabled the full chain within the organisation to be identified) and follow operations, it seems clear that these

worthwhile efforts have a limited impact on drug use in the industry. As was noted in an earlier section, there is evidence that some companies condone the use of drugs and a few, at least, actually supply the drugs themselves. The problem in the latter situation is that prosecution of such cases is likely to rely on drivers testifying against their employer. The Queensland branch of the TWU (written submission, page 8) complained that when it tried to refer these problems to the Police it was told to provide direct evidence (not hearsay). The union expressed concern that this was impossible to do without placing the driver/s in the invidious position of giving evidence on illegalities they had committed and also risking future employment prospects. The Inquiry heard sufficient evidence on this point to accept that, in most circumstances, it is highly unlikely that drivers will testify against their employer or even former employer.

Further, there are questions as to whether present activities aimed at detecting drivers or targeting distribution/supply points can succeed without also addressing the underlying reasons for drug use. In its written submission the Traffic Services Branch of the NSW Police Service pointed to the need for an effective prevention strategy to address the underlying reasons for drug use and draws attention to a number of industry characteristics already highlighted in this report.

The detection of drug-affected drivers is the final link in a long chain. Strategies need to be implemented prior to drivers resorting to drug taking. A long hard look at the number of operators servicing the industry needs to be undertaken. Are we over servicing the industry in general or in specific parts? How easy is it for me to obtain finance to buy a heavy vehicle and commence operating. What training do operators undergo prior to, and once entering the industry? Are they instructed on how to operate a successful business? Are they trained how to manage fatigue without resorting to the use of stimulants in order to keep their business viable and to make a reasonable living from the industry?

The RTA also emphasised the need to address root causes and, like the Police, stressed the role of commercial pressures:

The drug abuse problem is a symptom of the excessive pressures on drivers and the requirement for them to drive through the 'circadian low' from midnight to dawn. The problem is therefore best addressed through alleviating these pressures and educating drivers about sound fatigue management practices (written submission, RTA executive summary).

Some submissions such as that of the Victorian Road Transport Association and several transport operators called for the introduction of compulsory random drug testing of drivers similar to the system currently in place in the USA. The general manager of one large transport operator argued this should be done as a matter of urgency. Indeed, he expressed some exasperation that, compared to the concerted efforts to make the Sydney Olympics 'drug-free' there was no similar enthusiasm to do the same in road transport, despite evidence that it was a pervasive and long standing problem (written submission, Sydney based transport operator). One issue here is how to ensure drug testing doesn't become solely driver focused. A heavy transport summit held in Brisbane in August 1999 tried to address this issue by proposing that in addition to the random testing of drivers, operators of drivers testing positive be heavily penalised, especially where it could be shown that unrealistic deadlines 'forced' drivers to take drugs. The Queensland Minister for Transport was reported to be considering this proposal but the Inquiry is unaware of any further action on the issue.

Conclusion

Thus far, efforts by various government agencies to arrest the use of drugs in the long distance trucking industry appear to have had a very limited effect. While a tougher mandatory drug-testing regime such as that pursued by the Department of Transport in the

USA will have an effect it is not clear that this would be sufficient. The Inquiry heard evidence from persons with a knowledge of the industry who had visited the USA that due to privacy laws and the shortage of drivers, truck drivers dismissed following mandatory annual drug tests can readily join another transport company (and one located close to the initial employer). Further, to the extent that vigorous testing encourages labour turnover/instability then this will have its own adverse consequences for health and safety in the industry. The evidence of Professor Michael Belzer from the University of Michigan clearly showed that high levels of labour instability in the trucking industry were not conducive to safety. The last thing the Australian trucking industry needs is the high level of labour turnover that seem to characterise US operators (although it should be noted that the greater use of subcontract owner/drivers probably achieves a similar outcome). While suggestions about job shifting to escape the consequences of drug tests and other problems need to be tested further they do highlight the limitations of a driver-focused regime in such a competitive industry. Further, an Olympics-style approach to drug-use by the far-flung trucking industry of would be very expensive.

A more effective approach would be to combine targeted enforcement activities with interventions designed to remove the root-causes of drug use in the industry. Thus, enforcement activities should target supply chains. Equally efforts should be made to combat the reasons that induce drivers to use drugs and in particular long hours and tight schedules. Selective use of random or systematic drug testing could be introduced to reinforce the eradication process once other changes are underway.

4.4 Overloading, Load Restraint and Other Offences

The Inquiry received a number of submissions in relation to enforcement measures designed to combat the overloading of vehicles. The RTA has a network of weighbridges on major routes to check heavy vehicles for overloading (and at which all trucks are obliged to stop) and inspectors also have the capacity to do on-road assessments. Several oral and written submissions, including those of drivers themselves, alleged that the closure or part-closure of several weighbridges had created major loopholes in the network that were being systematically exploited by some trucking operators. For example, on the Pacific Highway/F3 motorway between Sydney and Newcastle there is a weighbridge for northbound trucks but no longer any weighbridge for southbound vehicles. It was suggested that operators took advantage of this to run overloaded trucks into Sydney. A similar argument was made in connection to a weighbridge on the New England Highway near Tamworth where the RTA closed down the south-bound side due to, it was suggested, a dangerous set of lane changes required by trucks entering and exiting the weigh station. A former RTA inspector criticised this change, arguing that the southbound station was the more important one because it had handled trucks bringing grain from the northwest of the state to the port of Newcastle. During hearings the Inquiry asked RTA about alleged exploitation of gaps in the weighbridge system and was told that the RTA was aware of the issue.

As with fatigue, road transport legislation provides a series of powers to deal with the immediate risks posed by overloading, poor load restraint or defective vehicles. Under the Roads Act 1993 Section 230(2) provides an authorised officer with the power to direct a driver to stop the vehicle in relation to the vehicle's load. Section 231(1)(a) provides the power for an authorised officer to prohibit the person in charge of the vehicle from driving the vehicle until the vehicle's weight no longer exceeds the maximum permitted. Section 231A(1)(a) provides the power for an authorised officer to prohibit the person in charge of the vehicle from driving the vehicle until the vehicle's load is properly secured. This section applies to vehicles with a GVM over 4.5 tonnes, a vehicle combination with a GCM over 4.5 tonnes or any other vehicle being used for business or commercial purposes. Under the Road Transport (Vehicle Registration) Act 1997 Section 27B(4)(a) provides a police officer or the Authority (RTA) with the power to request or signal a driver of a heavy motor vehicle to stop

the vehicle in relation to the vehicle's safety. Section 26(2)(c) provides a police officer or the Authority (RTA) with the power to prohibit the use of the vehicle in accordance with clause 77 of the Road Transport (Vehicle Registration) Regulation 1998. This is prohibition is achieved by issuing a major defect notice under clause 77(1)(a). Section 42 provides an authorised officer with the power to stop a vehicle in connection with mass and other load requirement checks.

The NSW Police submission drew attention to the enforceability of new regulations on load restraint.

For many years Police relied on experience and training provided in developing a common sense approach to pro-active load restraining practices. The legislation governing load restraint was simple and easy to interpret. As part of the Road Transport legislative reform process a Load Restraint Guide was developed. This guide provides examples of the types of restraints that should be used on varying loads that should be used on varying loads. The guide then goes onto say that Alternative Load Restraints may be used in preference to those referred to in the guide as long as they meet the performance standards outlined in Section D1. When an officer turns to Section D1 in the guide they are presented with an engineering discourse that is impossible to decipher on the roadside. It is preferable that Police take action before the load falls off and causes death, injury or serious traffic congestion. I quote the following as an extract from Section D1 of the Load Restraint Guide, regarding alternative load restraining.

'To achieve the above, the load restraint system must be capable of withstanding the forces that would result if the laden vehicle was subjected to each of the following separately

- *0.8g deceleration in forward direction*
- *0.5g deceleration in a rearward direction*
- *0.5g acceleration in a lateral direction*
- *0.2g acceleration relative to the load in a vertical direction'*

How would Police be in a position to gather the required evidence to prove a case in a court of law, under the above performance measurement process. The Police Service has received a number of requests from the industry itself, asking if police could provide advice as to the contents of the Load Restraint Guide and how they (the industry) should interpret certain areas? (written submission, Traffic Services Branch of NSW Police Service).

4.5 Enforcement of Offences Relating to the Transport of Dangerous Goods/Hazardous Waste

As indicated earlier, in addition to the main body of road transport legislation there are also special regulatory controls on vehicle emission of noise and air pollutants as well as the transport of dangerous goods and hazardous wastes. The Environmental Protection Authority (EPA) is the prime agency responsible for enforcing this legislation, which makes no differentiation between short and long haul road transport. The NSW legislation for transport of dangerous goods is the Road and Rail Transport (Dangerous Goods) Act 1997 while the primary law governing hazardous waste is the Protection of Environment Operations Act 1997. Each of these Acts implements relevant national requirements. National dangerous goods legislation was coordinated by the National Road Transport Commission (NRTC) as part of the national road transport industry reform process. Hazardous wastes regulation was based on the National Environment Protection Measure for the Movement of Controlled Wastes between States and Territories under the National Environmental Protection Council Act, and equivalent State and Territory legislation.

In its submission the NSW EPA stated that the legislation placed specific responsibilities on all those in the management chain of the transport industry not just the driver (written submission, NSW EPA, page 2).

With regard to dangerous goods the NRTC's coordination process ensured the responsibilities, procedures and operating requirements were identical between jurisdictions, with mutual recognition provisions to minimise bureaucracy (for example a license issued in one jurisdiction is valid in any other). The legislation entails substantial penalties of fines of $500,000 for a company and $100,000 and four years gaol for an individual. The legislation specifies the responsibilities of (and associated penalties pertaining to) consignors, transport companies, vehicle owners, tank and package manufacturers, vehicles loaders and those filling/emptying tank vehicles. The EPA stressed that most offences aimed at those in the management chain above the driver and that Penalty Infringement Notices (or PINs of up to $3,000) could be used for many of these offences. Since the inception of the legislation in April 1998 the EPA reported it had issued 90 PINs totalling $125,000, two court prosecutions had been finalised and investigations into another major incident was under way. The Inquiry understands that the EPA has a deliberate strategy of targeting enough serious prosecutions 'high up the chain' (ie beyond transport companies) to send a deterrent message to those parties with considerable influence over the entire dangerous goods movement process and that this approach has met with some success. This approach would also appear to strengthen the position of transport companies in ensuring customers and clients follow due procedures (Borger, 2000:19-22).

With regard to hazardous wastes the Protection of Environment Operations Act (and associated Waste Regulation) requires waste transporters to be licensed and details the responsibilities of those involved. The Act provides for fines of up $250,000 for a corporation and $120,000 for an individual under the Act (or $20,000 and $10,000 respectively under the Regulation). A far higher penalty of up to $1 million (for a corporation) or $250,000 or seven years gaol for an individual applies to the specific offence of wilfully or negligently causing a leak or spill that may cause environmental harm. There are additional controls apply to the transport of declared scheduled chemicals under the Environmentally Hazardous Chemicals Act. Informally, the Inquiry was led to believe this framework has enjoyed less success in terms of enforcement than is the case with dangerous goods.

Overall, it can be noted that environmental legislation pertaining to the transport of dangerous goods and hazardous waste entails far more serious penalties than is the case with road transport legislation (apart from criminal charges laid against drivers in the case of an incident causing death or serious injury). Further, this legislation also has a stronger focus on the top of the chain of decision-making in terms of legislative form - an emphasis reinforced by associated compliance activities. In short, the legislation is far less driver-focused and has reached up beyond the transport company to those who own, control or receive dangerous goods or waste materials. Environment legislation is far more sensitive to the realities of commercial power and influence in the transport process than road transport legislation, and evidence would seem to suggest (as far as dangerous goods are concerned) more effective as a result. As such, it provides an instructive model for improving enforcement in the long haul trucking industry. While environmental legislation plays a confined role in terms of the areas of road transport it can address the same does not apply (at least in principle) to OHS legislation, which broadly resembles environmental legislation in terms of penalties and duties. It is to this body of law that attention now turns.

4.6 The Role of the WorkCover Authority of NSW in Enforcement

In addition to enforcement under road transport and associated dangerous goods/hazardous waste legislation the long distance road transport industry clearly falls within the ambit of occupational health and safety legislation, most notably the Occupational Health and Safety

Act 2000 and its administering agency, WorkCover NSW. WorkCover also administers the Timber Industry (Health and Safety) Regulation 1982 that covers transport because it includes provisions on the movement of logs between felling/logging sites and timber mills, but whether this would often include long haul (as defined by this Inquiry) is a moot point.

In the view of this Inquiry, a truck engaged in a commercial or work-related task is a workplace, albeit a mobile one. Irrespective of its origins, ownership or the jurisdiction in which it is registered once a truck travels on a NSW road the truck becomes a workplace in NSW and its operator and driver are both subject to the full legal responsibilities enshrined under the Occupational Health and Safety Act. However, as far as this Inquiry could determine the WorkCover Authority of NSW has never really sought to exercise its powers in relation to the long distance road freight industry, notwithstanding repeated urging from the Transport Workers Union. For example, the NSW Branch of the TWU pressed for a prosecution in relation to Scott's Refrigerated Freightways in 1997 (discussed above). In November 1999 branch officials met with the then General Manager, John Grayson to discuss its concerns over driving hours and as recently as January and February 2000 wrote to the General Manager asking WorkCover to investigate specific fatal/serious on-road incidents and to inform it of current investigations. In February the General Manager responded stating that the agency investigated work-related accidents in any industry, had always investigate traffic accidents on a road works site or where there were indications inadequate systems of work contributed to the accident. He then added:

WorkCover recognises that for some workers in the road transport industry a truck or motor vehicle is a place of work. I have therefore issued a media release reminding employers in the transport industry of their obligations to report workplace incidents, which in their case may include road traffic accidents.

WorkCover acknowledges however that the NSW Police Service, which provides the emergency response is the lead agency in regard to the investigation of road traffic accidents. WorkCover also acknowledges the role and responsibility of the Roads and Traffic Authority (RTA) in this regard.

The RTA has primary responsibility for the regulation of the long distance trucking industry, including making provision for or with respect to the management and prevention of driver fatigue in connection with the driving of heavy trucks and coaches. WorkCover is advised that it is the practice of an RTA Officer to attend the majority (85%) of road traffic accidents involving heavy vehicles.

Arrangements like these are accepted practice among government agencies where there is potential for more than one agency to be involved because of overlapping legislation and/or responsibilities.

Investigation by WorkCover into accidents involving truck drivers have resulted in prosecution action being taken (Correspondence, John Grayson, General Manager of WorkCover to Tony Sheldon, Secretary of NSW Branch TWU, 24 February 2000).

While in no way questioning the veracity of the last statement, the Inquiry could find no evidence of a prosecution in relation to an on road incident involving long haul truck drivers although several matters were investigated with a view to this. This absence of enforcement activity appears to be the result of a deliberate policy decision just identified by the then General Manager and essentially reiterated by the WorkCover Authority in its oral and written submissions to the Inquiry. It should be noted that at the time he wrote the letter just quoted, the General Manager was aware of an impending Inquiry (this Inquiry) and made specific reference to it, indicating that these issues would be considered as part of the Inquiry's terms of reference. In other words, while stating the WorkCover position, he was

aware this issue would be subject to an examination. This was also approach adopted by WorkCover in their submission to the Inquiry.

In its submission WorkCover argued that safety problems in the long haul trucking industry formed part of the general imperative of road safety and it was therefore preferable for road safety legislation to remain as the central safety regime in this area. It argued that road safety legislation provided the most comprehensive and preferable tool to undertake this task (written submission, WorkCover, pages 7-10). WorkCover also made reference to notion of a lead agency arrangement whereby in areas where several agencies had overlapping responsibilities, one agency would take on the major compliance role with other agencies acting in a supporting capacity. In keeping with this and its arguments about the overarching road safety imperative, WorkCover viewed the RTA (together with the NSW Police) as the lead agency in road transport, including long haul road transport, and saw its own role as one of providing support. The agency noted that it had never seen the investigation of road traffic accidents as a primary role and road traffic fatalities were not recorded in its workplace fatalities surveillance system (written submission, WorkCover NSW, page 9).

WorkCover also pointed to some regulatory restrictions on its coverage of road transport. While noting the emergence of the concept of a 'mobile' workplace and more liberal court interpretations of the geographic boundaries of a workplace, the agency (written submission, Appendix 3) noted several limits on this development under the Occupational Health and Safety Act. This included (s53 of the 1983 Act dealing with practicality considerations) and the inclusion of the words 'at the workplace' in both general duty provisions (sections 15 and 16 of the 1983 Act and sections 8 and 9 of the new Act). WorkCover also expressed reservations about coverage of owner/drivers under the Act, doubted whether the intent of the Act was to cover road transport and pointed to the onerous responsibilities this would place on the agency. The Inquiry was a little perplexed by WorkCover's stance. An expert on OHS and employment law, Associate Professor Richard Johnstone from the University of Queensland, was asked by the Inquiry to investigate a number of issues including to what extent the general duty provisions of the NSW OHS Act can be seen to extend to the road transport industry. A full copy of Associate Professor Johnstone's legal opinion is to be found in Appendix 2 of this Report. Summarising this opinion, it can be noted that Johnstone (Appendix 2, page 8) concluded that the NSW Act:

...contains a range of general duty provisions which cover the major parties to long haul trucking arrangements. Of particular importance are the general duties in section 8(1) (employers to employees), 8(2) (employers to persons other than employees) and section 9 (self-employed persons to persons other than employees). These latter two duties have the potential to impose important duties on trucking companies, clients and consignors in relation to owner drivers, but their operation in this area is severely is severely constrained by the provision in section 8(2) and 9 that the duties only extend to persons exposed to risks "while they are at the employer [or self-employed person's] place of work.

In other words, the existing general duty provisions have wide coverage but for one serious flaw. Johnstone notes a similar proviso does not exist in corresponding general duty provisions of the Victorian Occupational Health and Safety Act and recommends the *"while they are at the employer [or self-employed person's] place of work"* be removed. The Inquiry believes the recommended amendment is fully warranted and urges it be undertaken as a matter of urgency.

Leaving the last issue aside, the need to investigate the antecedent causes of serious incidents so responsible parties (operators and other) could be held attributable was recognised by WorkCover. WorkCover argued that the new chain of responsibility road transport legislation provided a mechanism for implement risk management principles that incorporated the obligations of consignors, transport companies and other parties. The agency recognised that

the penalty limits available under this legislation was in no comparable to that found under the Occupational Health and Safety Act, 2000 and urged that this situation be addressed. In its oral submission agency representatives also acknowledged WorkCover's greater experience in undertaking prosecutions based on performance standards or general duties and offered to provide assistance to road transport regulators in this regard.

WorkCover has by no means entirely ignored the road transport industry. However, its activities have tended to focus on work locations (such as depots) and activities (such as manual handling) where it clearly has primary jurisdiction in terms of its responsibilities for OHS. For example, the agency produced a 'Truckload' web site (WorkCover NSW, 1999) providing practical guidance on equipment that could be used to prevent back injury connected to the loading and unloading of vehicles. Further, in its submission WorkCover argued that one way of encouraging most effective risk management by transport operators would be to follow the leverage model used by government departments when purchasing products or services from the private section. It pointed to the standard developed for all tendered construction work by the Department of Public Works and Services (written submission, WorkCover NSW, page 27). This required tendering contractors to have an appropriate OHS management system in place, a contract clause requiring an OHS management system to be prepared prior to the commencement of work, the auditing of these systems, and for all subcontractors to meet standards laid down for the principal contractor. WorkCover argued a similar model could be developed to apply to direct (ie moving government materials) and indirect (ie where goods are supplied) transport arrangements entered into by the NSW government as part of a strategy to encourage a risk management approach in the industry. The suggestion has merit. It would set a benchmark for other customers of the transport industry although, by itself, the leverage technique is highly unlikely to influence more than a minority of the industry.

Nonetheless, it is fair to say that, overall, WorkCover NSW saw itself as playing a marginal role in terms of regulating safety in the long haul trucking industry.

During the course of investigation the Inquiry found the overwhelming majority of parties making submissions saw safety in the long haul road transport industry as an OHS issue and not simply as a road/public safety issue (of course these components are not mutually exclusive). Most were of the firm view that OHS legislation should play a far stronger role in addressing the industry's safety problems. This was the viewpoint of a wide array of different parties and interest groups.

For example, the first point on enforcement raised by the Insurance Council of Australia in its written submission (page 7, Dallas Booth) was:

Relevant Occupational Health and Safety obligations must be used to control and enforce safety standards relating to the issues of driving hours, rest periods and drug use. By setting strict standards and conducting frequent random audits with the power to impound vehicles and report offending companies/drivers to police…would change current practices.

It is also important to note that the attitude of WorkCover NSW was not shared by several other jurisdictions. For example, in its written submission to the Inquiry WorkCover Victoria noted that the issues of driving hours, drug use and speeding were interrelated and it was currently undertaking research on fatigue in Victorian workplaces in order to develop a framework for prevention. The submission noted that in 1997 the Transport Industry Safety Group (TSIG) had produced a guide explaining the OHS duty of care (with a video version) in order to address a lack of knowledge within the transport industry. The TSIG has also produced a video guide on fatigue management entitled 'How the hell can you take a break?' More recently WorkCover funded the development of TransCare - a transport-specific performance-based management system designed to achieve a more comprehensive and due-

diligence approach to OHS - by the Victorian Road Transport Association (discussed below). Further, a recent report prepared on falls from heights found truck drivers and other transport workers were at risk of falling from the top of a trailer or its load (while the industry is aware counter-measures such as overhead pulleys and gantries, by and large, these are not being utilised). In response WorkCover has funded research into falls from trucks and loads.

The Victorian agency made it clear it believed it had a strong enforcement role to play in road transport, one made especially important by advantageous features of OHS legislation and corresponding problems with the existing road transport regulatory framework. It noted that road transport was an extremely competitive low margin industry with many small operators and subcontractors but the OHS legislation had regulatory requirements, especially those within the general duty provisions, to deal with this. For example, it specifically noted section 21 (3) (a) of the Occupational Health and Safety Act 1985 extended employer duties to independent contractors and their employees. Section 22 of the Act imposes a duty that other persons should not, as far as practical, be exposed to risks to their health or safety – a public safety provision that would clearly encompass other road users in the case of a road transport operator. Further, it noted that OHS responsibilities extended along the full vertical chain of responsibility from consignor/supplier through transporter to client. The Inquiry would note, that as Associate Professor Johnstone points out in his opinion (see Appendix 2), the deeming provision (section 21(3)) has been rendered somewhat redundant by the courts' quite expansive interpretation of section 22 and its equivalents in the OHS Acts of other jurisdictions such as NSW. In other words, the fact that the NSW does not contain an equivalent to section 21(3) is not a problem, provided the suggested amendments to sections 8 and 9 (see below) are implemented.

Under section 22 of the Victorian Act chain of responsibility can be enforced, as suppliers and clients (where they are employers or self-employed persons) owe a duty of care to persons at their workplace (who are not their employees) to ensure they are not exposed to risks to their health and safety. While prosecutions of parties such as suppliers and manufacturers have been rare in the past a number of WorkCover agencies have signaled their intention to target these parties in future. A recent landmark decision by the Full Bench of the NSW Industrial Relations Commission (involving Arbor Products International, a supplier/manufacturer of wood chipping machinery. Reported in *Occupational Health News* Issue 495 26 July 2001) indicates these intentions are being implemented. As far as the road transport industry is concerned factors that might be considered could include fatigue, unrealistic scheduling or delivery requirements imposed by suppliers and clients and work environments at pick up and delivery that cause undue delays or exhausting manual labour to drivers.

WorkCover notes a common view in the industry that whilst the legislation administered by the National Road Transport Commission (NRTC) addresses significant issues in the industry, this has not been pursued vigorously enough and the prescribed fines are too low.

The Victorian OHS legislation enables courts to impose jail sentences for directors responsible for failing to provide safe systems of work, and the industry is particularly keen to see a jail sentence enforced to send a clear message of the importance of health and safety.

The Victorian agency noted that it actively pursued prosecutions, including those against employers for failing to provide a safe system of work. To illustrate this in connection with the road transport industry it pointed a prosecution of Don Watson Pty Ltd in 1999 for failing to provide a safe system of work for its truck drivers (Section 21 (1) & (2) of the Act), the company being fined $12,000. The company's operations manager was charged with failing to take care of employees under his direction (Section 25 of the Act) and fined $3,000 without conviction. The maximum penalties available under the Occupational Health and Safety Act, 1985 when the offences were committed in 1994 were $40,000 for the company and $10,000 for the manager but by the time the sentences were handed down the maximum penalties had

increased to $250,000 and $50,000 respectively. In handing down his decision, the County Court Judge made it clear that a far heavier penalty would be imposed on anyone committing these offences now:

Current offences would be more severely dealt with, not only because of that very marked increase in the maximum penalties, but also because of the increased awareness in the course of the last five years in the community about occupational health and safety issues and, in particular, the steps that can and must be taken to provide a safe working environment (*Queen v Pierce Philip Gage and Don Watson Pty Ltd* County Court of Victoria, 11 August 1999).

It hardly needs to be added that these maximum penalties (and the equivalent penalties under the NSW Occupational Health and Safety Act) far exceed monetary penalties available under the road transport legislation, including chain of responsibility provisions. It should also be noted that the Victorian WorkCover submission essentially agrees with all the major components of the legal opinion on these questions prepared by Associate Professor Richard Johnstone for this Inquiry. The Inquiry is aware of WorkCover prosecutions for on-road incidents going back as far as 1998 although not all these involve for-profit freight companies. For example, the agency successfully prosecuted Mabro Meats PL and its director for failure to maintain a truck in roadworthy condition under s21 of the Occupational Health and Safety Act after a company-owned prime mover ran off the road when a steering linkage failed (*WorkCover Recent Prosecutions* No.3/4 1998:10-11). In this case, the driver was injured although the magistrate stated it was lucky no one was killed.

Prosecution by the Victorian WorkCover Authority received strong support from the local industry association (the Victorian Road Transport Association, written submission), especially where it was directed at serious on-road incidents:

In Victoria, unlike other jurisdictions a moving truck is considered to be a workplace and successful prosecutions have resulted from on road crashes. These crashes have been more serious in nature involving death…Even prior to presenting offending companies to court there was an impact on the industry. The information/rumour network created an almost immediate response in the form of requests for assistance at this organisation. Companies will respond in a positive manner to safety if they perceive that enforcement authorities are serious about prosecution.

It should be noted that Victoria is by no means the only jurisdiction where a truck would be considered a workplace. However, the real point being made by the Association – and one accepted by this Inquiry – is that in Victoria serious efforts have been made to follow this recognition with enforcement activity.

The option of using OHS legislation in relation to the long distance trucking industry has been raised in other jurisdictions. For example, in his findings on the Inquest into the death of six motorists arising from the 1996 Blanchetown smash in South Australia (already mentioned in this Report) the Coroner addressed the culpability of two managers under the Occupational Health, Safety and Welfare Act, 1986. Specifically, the Coroner believed both men had abrogated their responsibility as employers and then referred to duties under Section 19 (1) (a) to provide a safe working environment and a safe system of work; and to provide adequate information, training and supervision (s19 (1) (c)). The Coroner also referred to s19 (3), which requires employers to monitor employee health and well-being, keep injury records and provide information at the workplace (Coroners Court of South Australia, 1999 page 23). It should be noted that very similar general duty provisions are found within the principal OHS Act of every jurisdiction in Australia, including NSW. The Coroner noted that the Act also provided for detailed regulation identifying how these objectives could be achieved in particular industries. In concluding his observations on this point the Coroner observed:

The time has long passed when employers can take the "hands off" approach described by Mr Bunker and Mr Cushnie. I do not seek to suggest that WRB or its managers are in breach of the Act - to do so may contravene Section 26(3) of the Coroners Act. I merely observe that the attitudes displayed by both these witnesses are not consistent with modern concepts of the duty of employers to their employees.

In this regard, it seems to me that the Office of Workplace Services, part of the Department of Administrative and Information Services, has a substantial role to play in ensuring, by training, information and policing, that this legislation is complied with. I do not know what action has been taken by that department in relation to the heavy vehicle industry to date, but it seems to me that there is plenty of scope for them to play a more active role in relation to this industry, assuming they have the resources to do so (Coroners Court of South Australia, 1999 page 24).

In the same year the WorkCover Corporation of South Australia (WorkCover South Australia, 1998) produced a detailed 25-page guide to meeting the OHS duty of care in the road freight transport industry. The guide identified the major responsibilities of employers, employees, self-employed persons, and having a system in place to safeguard subcontractors under general duty provisions in the South Australian Occupational Health, Safety and Welfare Act, 1986. It also detailed the key elements in establishing an OHS management system (including management commitment and policies, hazard identification, risk assessment and control measures, fleet and depot inspection/auditing, training, dangerous goods, fatigue management and employee consultation). What is noteworthy about this document is that it presents these responsibilities in an integrated fashion while identify the relevant provisions under OHS, road transport and dangerous goods legislation (and agency contact points). What is equally noteworthy is that this document was produced in response to concern from industry operators and employees as to how they to comply with OHS legislation. In Queensland, the Division of Workplace Health and Safety (1994) issued a guide on health and safety in the road freight industry in 1994, which has since been updated. Even the 1994 version identified the relevant general duty provisions covering employers, employees, self-employed persons and others (sections 9,10,13 and 14) under the Queensland Workplace Health and Safety Act, 1991. The guide contained a fairly detailed and (for the time) advanced section on fatigue, which amongst a number of others, was clearly directed at the long haul sector.

The need to bring OHS legislation into play in the trucking industry has also been recognised in other countries. For example, the recent New Zealand inquiry into truck crashes recommended that:

The Health and Safety in Employment Act 1992 should be applied immediately to truck operations by the Occupational Safety and Health Service, in conjunction with the Police, especially for serious offending where the full force of the Act is justifiable (Storey 1996:12).

The New Zealand report noted that OHS legislation provided that employers, including company directors, who breached the Act could be fined up to $NZ 100,000 or gaoled for up to one year. In other words, the penalties available were fare more significant than those normally applying under road transport legislation and could also consider systematic offences (these are issues to which this Report will return). The New Zealand report also made recommendations in relation to the appointment of inspectors (both in the short and long term) to facilitate enforcement under the Health and Safety in Employment Act, 1992 (Storey, 1996:84-85). A more recent inquiry health and safety problems in Tranz Rail (New Zealand, 2000:46) reinforced this point, arguing that rail employees should be afforded the protection of general duties in the principal OHS Act (the Health and Safety in Employment Act or HSE Act):

There is, in our view, no justification for rail employees having a lower level of occupational health and safety protection than the work force generally. We therefore recommend that the provisions of Part II of the HSE Act that set out the duties of employers relating to health and safety in employment should apply without restriction to all rail employees.

This Inquiry can see no reason why an analogous argument should not apply to road freight. Indeed the Tranz Rail Inquiry made specific reference to road transport, and the recommendations of the 1996 inquiry into truck crashes, to support its argument with regard to rail freight.

A Task Group established by the Health and Safety Commission in Britain found the longstanding reliance on transport legislation and enforcement authorities was no longer adequate, although it excluded heavy vehicles from this:

It has been Government policy for many years that the health and safety enforcing authorities should not investigate at-work road traffic incidents, except where work vehicles or workers are engaged in specific work activities (eg refuse collection, street cleaning). However, one consequence has been that, other than for large vehicles, there has been little motivation for employers, or the enforcing authorities, to examine whether a failure in health and safety management systems might have contributed to an incident.

The Task Group believes that this position is no longer sustainable. Our central position, therefore, is that employers should manage risks associated with at-work road journeys and other safety within their firms. This could mean approaches set out in existing health and safety law (principally the Health and Safety at Work Act (HSW Act) & the management of Health and Safety at Work Regulations 1999 (the Management Regulations) would become relevant (Health and Safety Commission, 2001:2-3).

The Task Group discussion paper does not specify why heavy vehicles are excluded from the problems identified. Somewhat perplexingly, heavy vehicles feature in at least one of three case studies referred to later in the paper on the benefits of health and safety management systems similar to those promoted under OHS legislation (Health and Safety Commission, 2001:5). It is also difficult to reconcile this position with the findings of the House of Commons Committee of Environment, Transport and Regional Affairs released in July 2000 that were discussed in the earlier section on commercial practices and safety (see above). It is possible the Task Group was influenced by the existence of operator licensing but of course no comparable scheme exists in Australia and the New Zealand evidence referred to earlier is that such a scheme would benefit from a closer integration with OHS legislation rather than being seen as a substitute for it.

Leaving these issues to one side, the Task Group discussion paper went on to discuss the nature and benefits of a more integrated approach, including reliance on the broad duty provisions the Health and Safety at Work Act sets out for employers, the self-employed and employees as well as the risk assessment processes established under this legislation in conjunction with European Directives (including the Framework Directive 89/93/EEC). While the discussion paper is by no means a statement of final position (and indeed calls for comments on how to implement these changes) the general thrust of a shift from policy is clear. In an associated document (Health and Safety Commission, 2001:12) it is noted that 'at-work' vehicles account for an estimated 30% of all miles driven on British roads and that of an average of 123 'at work' persons killed in traffic accidents (4% of all traffic fatalities) 40% were in heavy or small commercial vehicles.

Nor was the WorkCover NSW interpretation one that found support amongst industry, insurance company, the union, drivers, community organisations and others that the Inquiry interviewed in the course of its investigations. Virtually without exception they at the very

least accepted that safety in the long haul freight industry was an occupational health and safety and as such one where OHS legislation should play a role. Many went beyond this, advocating rigorous use of this legislation as critical to establishing a more effective enforcement regime (for example, the NSW Road Transport Association).

What is perhaps most telling is that the RTA itself did not share WorkCover's views. In its own submission (executive summary) the RTA stated:

There would be advantages in WorkCover taking a stronger role in insuring safe working practices in the industry given that trucks are clearly workplaces of their drivers.

Consistent with its recognition of the role of OHS law, the RTA recently adapted its *Heavy Vehicle Drivers Handbook* to include a section, approved by WorkCover, that makes the relevance of this legislation explicit:

The Occupational Health and Safety Act 1983 (OH&S) places obligations upon employees to ensure the health, safety and welfare of their employees in the workplace. This duty of care requires everyone in the workplace to be aware of potential hazards and take steps to prevent workplace accidents, injuries and illnesses, and the Act provides for severe penalties where it is established the employer has failed to meet that duty.

Any vehicles used by employees in the course of their employment is defined as their workplace, including heavy trucks or commercial buses. One aspect of provision of safe systems of work by employers would be compliance with the National Driving Hours Regulation, and this in turn would obligate the employee driver under that OH&S legislation to co-operate in compliance with the National Driving Hours Regulation.

The National Driving Hours Regulation sets the limits for driving, other work and rest. These limits are a balance to fulfil the needs of efficient road transport, the management of driver fatigue and a workable system of compliance and enforcement. The limits do no guarantee that a driver will be free of fatigue in every circumstance.

It is important that employers and drivers adopt principles and practices to manage driver fatigue within those limits to ensure that they fulfil their duty of care.

The need for WorkCover to investigate serious on-road incidents involving freight trucks also found support within the ranks of operational police, being volunteered (without any prompting from the Inquiry) by a number of police officers. For example, a highway patrol officer with 19 years experience was perplexed by the failure of WorkCover to do this, wondering whether it was due to a legislative restriction or lack of manpower, because:

...in my mind all heavy vehicle accidents, I am talking about all heavy vehicle accidents - they are industrial accidents (oral submission, police traffic coordinator based in southern NSW).

The officer stressed that he was not advocating more enforcement per se, as the pattern of offences seemed to have changed littler over time, but rather more carefully targeted enforcement that would deal with those elements, such as freight forwarders, who were at the heart of the problem.

Calls for trucks to be treated as workplaces, and for on-road crashes to be treated as industrial accidents, also came from owner/drivers, a number of whom were unaware of the current situation, even in Victoria.

The TWU was not the only body to raise the lack of WorkCover inspections in relation to the depots/workshops of transport companies. When asked whether he had seen a WorkCover inspector during his time with a transport company, a former maintenance manager replied:

Thankfully no, being in charge of the workshop where there were a few bugs - that was a lot of the reason I left. Being in charge of the workshop I'm glad that I didn't see one because there is probably a few practices in there – people driving forklifts without licenses and unsafe work practices, people not wearing ...hearing protection when supplied and given to them. But I would have been the person in charge held responsible. No I did not see one (oral submission, former fleet maintenance manager).

Other managers and transport operators, some quite large, indicated that they could not recall a WorkCover inspection of their workshops and depots. While such responses are anecdotal and subject to error they do indicate that whatever inspections have been carried out have remained largely invisible in the eyes of transport operators even that area of road transport operations where it might be expected WorkCover would be active under its own preferred approach.

One apparent consequence of the failure of WorkCover to take a significant role in road transport more generally is that worker's compensation claims data does not appear to have been used for targeting prevention activities. In its written submission (page 8), the Insurance Council of Australia referred to the claims rating experience of Road Freight Transport (ANZIC Code 611) in NSW included in a detailed analysis undertaken by the Premiums Rating Bureau. The analysis found smaller employers (workers compensation premiums up to $50,000) accounted for 97% of policies, 50% of the premium pool and about 50% of the cost of claims. A small number (ie less than 10) of very large employers (ie premiums in excess of $600,000) account for about 15% of the premium pool and a smaller proportion of the cost of claims. There are about 150 companies in the medium-size category (premiums over $50,000 but less than $600,000) with about 110 of these contributing about 20% of premiums but accounting for less than 10% of claims. The remaining 40 employers (about 1% of policies) contribute 10% of premiums but account for nearly 25% of the cost of claims. Such patterns are not unique to NSW or even Australia. For example, in the USA in 1997 one in ten workers in the trucking and warehousing industry suffered an work-related injury or illness, almost 50% higher than the rate pertaining to the private sector as a whole. Further, in 1996 the Occupational Safety and Health Administration (OSHA) identified 56 trucking companies that had injury rates double the transport industry average (Jeffress, 1999).

The Insurance Council argues companies with significantly worse claims experience were effectively being subsidised by their competitors and should be targeted (a similar argument is made in relation to property and CTP insurance). There is some merit in this argument. At the very least, information on companies with worse records should be available to those agencies responsible for prevention. While this might present difficulties for the RTA there is no reason why WorkCover's own prevention arm could not target these firms. At the same time, some caution is required. Account needs to be taken of the distortions to workers' compensation data that arise from the extensive use of self-employed owner/drivers in the industry and the fact that the good record of some companies may be an artefact of claims suppression/referral to Medicare discussed in Section 2. The better claims record of some medium to large operators may be heavily influenced by the extent to which they subcontract. While using subcontractors may effectively reduced the company's exposure to workers' compensation claims this is no way commensurate with an improvement in safety performance. Indeed, it is quite possible that safety may have actually deteriorated. These arguments do not justify a decision not to target companies with poor workers' compensation claim records but does suggest such practices need to be used carefully, and in conjunction with an array of information.

Conclusion

Up to the present time there has occupational health and safety legislation has played little if any role in the enforcement of safety in the long haul trucking industry in NSW. The evidence presented to the Inquiry clearly indicates that this represents a serious limitation in the current enforcement regime that should be addressed as a matter of urgency. A number of (if not most) OHS agencies in other Australian jurisdictions have already begun to move in this direction and there is support for this amongst most stakeholders and other interested parties. While the Inquiry understands the reluctance of WorkCover NSW to become involved in a jurisdictional battle with other enforcement agencies or to cause a more uncoordinated enforcement regime it has a clear and significant responsibility for safety in the trucking industry. Further, experience in other jurisdictions, such as Victoria and Western Australia, indicates that agencies can work effectively together. The Inquiry believes it is time for NSW to follow their lead and specific recommendations to achieve this are made later in the report.

4.7 Award Rates, Owner/Driver Rates and Minimum Labour Standards

Unfortunately, the Australian Trucking Association is unable by its charter to involve itself in industrial matters, and… this is an impediment in solving many safety issues in the Long haul industry (written submission, NSW Road Transport Association, page 2).

As this Report has already indicated payment methods/minimum payment rates for drivers, whether they receive formal entitlements in relation to pay (in the case of employee drivers), and delays to payment (especially in the case of owner/drivers) have significant safety implications. In addition to the evidence demonstrating this link it can be noted that the association is well recognised amongst many parties to the industry. For example, in its submission the NSW Road Transport Association, which represents truck operators in NSW, argued that failure to address these award and contractor rate enforcement was undermining attempts to improve safety in the industry. In doing so, the Association identified a number of significant issues and so it is worth quoting at some length.

It has long been the understanding of the NSWRTA that compliance with safety regulations and Occupational Health and Safety legislation is not possible without award compliance. Put simply, an employee cannot be expected to work safely if that employee is not being paid the correct award entitlement. The impression of this Association is that compared to the size of the industry award compliance is minimal. We are not aware that any cases for breaches of award compliance in the transport industry have been run in the past five(5) years.

This is exacerbated by the fact that in the transport industry there is serious confusion regarding award coverage between the Federal and State system. In order to be bound by a Federal Award a transport company must be named in the Schedule of "Parties Bound" attached to the award. The Industrial Relations Commission must order this to be the case, but only after being convinced in a hearing that the company should be so bound. This procedures is commonly known as a "Roping In" and follows the serving of a Log of Claims on the company by the Union, a dispute being found, and a decision to "rope in" being made. This process is not understood by a larger majority of transport employers in this country and this ignorance is in large part a reason for massive non-compliance to Federal Awards. Many transport employers just don't know their obligations in this regard.

In contrast to this, State transport awards are "common rule". This means that if a company is based in eg New South Wales and is not party or "roped in" to a Federal Award by the processes previously described, and that company is in the business of transporting goods in New South Wales then that company is bound by the relevant State award, in this case the Transport Industry (State) Award.

Again, the Arbitration Inspectorate of the Department of Industrial Relations in New South Wales is severely understaffed, so monitoring State Award compliance in the industry is rare. The Department only relies on complaints from employees to act: however employees are reluctant to complain for fear of losing their job. Complaints from employees tend to be limited to disgruntled ex-employees.

This is unsatisfactory as a means of ensuring that employees are not disadvantaged. Ultimately, a company who takes advantage of employees by award breach has an unfair advantage over a business competitor who complies with the Award.

Over the years, employers have argued that the Transport Award in New South Wales has been far too restrictive, and this is one of the main reasons why they ignore its content. About five (5) years ago the NSWRTA and the TWU (NSW Branch) set about modernising the award to remove these perceived impediments to productivity. This process was not without some heartache on both sides. Eventually, wage rises for award variations were agreed and the consent document was approved by a Full Bench of the NSW Industrial Relations Commission in December 1996. This process was repeated in April 2000, again resulting in wage rises for greater award flexibility. The Transport Industry (State) Award has thus been made more flexible in its conditions, eg to the extent that Saturday and Sunday can now be worked as part of ordinary time, and part-time provisions are now included.

There have been many more changes, all to allow greater flexibility of operation of the award, such that no employer could now argue that his business is being disadvantaged by having to comply (written submission, NSW Road Transport Association, pages 8-9).

In short, the Association argued the framework of federal and state awards was confusing to employers (especially 'roping in' under federal awards) and that non-compliance with awards was widespread and seldom pursued except in relation to complaints. The independent legal advice prepared for this Inquiry by Associate Professor Richard Johnstone concurs with this assessment (see Appendix 2). Clearly, in such a competitive industry as long haul road transport the disparities in coverage and level of award rates represents a serious problem (Professor Johnstone identifies a number of potential remedies).

The Road Transport Association also argued that concerns inflexibility in the NSW Transport Industry Award encouraged non-complaince had been addressed. Given that it is the major representative of the industry in NSW, and has been so for more than 100 years, the Association position that these problems have now been eliminated must be given strong weight. That award evasion continues, in the Association's view, to be widespread and that this has serious consequences for safety, are cause for concern, especially as it is supported by other evidence presented to the Inquiry by transport operators, individual drivers and the Transport Workers' Union (TWU).

During the course of the Inquiry's investigation, it received submissions from operators (especially medium to large firms) attesting that award evasion was widespread, particularly amongst smaller firms. In its written submission (at page 10), the NSW Branch of the TWU argued that award compliance represented a far great problem in long distance sector of road transport (in comparison to short hall) and referred to its own experience of pursuing wage recoveries:

As an indication of...the pressure on drivers to continually reduce their rates to remain competitive we would like to draw the attention of the inquiry to our experience of back wage claims in the long distance industry. In these cases the union has found it not uncommon for long distance drivers knowing they are entitled to higher rates to accept rates below their legal entitlements on the basis that they know if they asked for a higher rate they wouldn't

have a job. Often this practice is also accepted on the basis of knowledge of their entitlement to a backwage claim once they leave a particular company.
There was wide acceptance that serious award compliance problems in long haul road transport were essentially an outcome of competitive pressures on transport operators (low freight rates and lower labour costs charged by owner/drivers) and employee driver fears that demanding award entitlements would place their job at risk. Overseas evidence supporting the willingness of truck drivers to accept below their minimum legal entitlements to safeguard their job is presented below. The Inquiry also received numerous submissions arguing that award non-compliance was factored into work and scheduling arrangements, with drivers undertaking additional hours in order to make up what they lost in not receiving award entitlements. This claim finds support in evidence arising from specific incidents such as the Coronial Inquest into the Blamchetown smash in South Australia referred to elsewhere in this Report, which revealed a systemic pattern of such behaviour. The Blanchetown case also reinforces the connection between award entitlements, driving hours and safety. With regard to the level of expectation that drivers will accept these arrangements, it is also worth recalling submissions from drivers, the TWU and CFAT about drivers who refused excessive hours being threatened with dismissal. The Inquiry heard enough detailed examples of such incidents to form the view that these were not aberrant or atypical, at least with regard to some operators.

In his oral submission, NSW branch secretary Tony Sheldon claimed that by 'cooking the books' the payments to drivers employed by small regional companies in particular might be as little as half their full aware entitlements. Not surprisingly, other branches of the union echoed the views of the NSW branch. The Victorian/Tasmanian branch echoed the view that award evasion was worst outside the metropolitan area and in relation to casual drivers. It added that company turnover/closure exacerbated the problem and alleged some closures were a deliberate attempt to evade the legal entitlements of drivers. The branch (oral submission) referred to a claim for over $80,000 in unpaid wages it was pursuing from a Shepparton-based company relating to award breaches over a six year period. In its written submission, the Queensland branch of the TWU reproduced (supported by copies of letters and sworn statements) a number of instances of non-payment of award rates or illegal withholding of wages (including allowances) reported to it. In these cases (where the names of drivers and the company involved were identified) the Queensland branch repeated identified a connection between low wages (including below award payments) and drivers being forced or encouraged to work excessive hours outside the legal driving limits. The Inquiry also received written (some with appended documents) and oral submissions referring to the failure to pay due entitlements. Indeed, no one the Inquiry spoke to seemed to query this was an issue though large transport operators suggested it was mainly an issue with small to medium operators.

The Inquiry was unable to precisely estimate the size (in terms of a proportion of total entitlements) or extent of award evasion. For reasons indicated below as well as others (such as the fact that in a number of industries it is unions not government inspectors who have historically done the bulk of enforcement) government records on enforcement must be treated as a very partial indicator of the extent of evasion. Nevertheless, there was widespread acceptance by a range of parties that award evasion is extensive in both scope and size (ie the level of underpayment in each pay packet). Indeed, the Inquiry is unaware of any individual or organisation making submissions who disputed this interpretation. The impression that award evasion is widespread finds support in the available evidence. This evidence also indicates this has been a serious problem for some time. Williamson et al's (1992) study of 960 long distance drivers found that about 50% of independent owner/drivers reported that they were paid below award rates. But this proportion may well understate the extent of below award payments, especially owner/drivers, because twice as many owner/drivers responded that they were unaware of award rates. Similarly Arblaster et al (1995) found that amongst drivers employed by large companies only 54.5% received award rates, 36.4%

received below award rates, and 9.1% of drivers were unsure whether they were receiving award rates or not. For drivers employed by medium-sized firms the responses were 27.8% on award rates, 61.1% below award rates and 11.1% unsure while for drivers employed by small firms the responses were 25% (award rates), 62.5% (below award) and 12.5% (unsure). That is, the smaller the firm the greater the proportion that is paid below award rates. Amongst owner/drivers the study found that only 11.1% claimed to be receiving award rates with 66.7% receiving below award rates and a further 22.2% being unsure. Thus financial pressures are greatest on drivers in small business.

Long distance trucks on NSW roads can belong to operators based in any Australian jurisdiction. Further, federal awards cover a number of operators. For both these reasons compliance and enforcement of award wages cannot be considered only within the jurisdiction of the relevant NSW agency, namely the Department of Industrial Relations. Therefore, in order to obtain more information on the extent of compliance and enforcement practices in relation to award wage rates, the Inquiry contacted the relevant Minister of every state, territory and federal jurisdiction asking for relevant information over the last five years. In most cases the responses were only able to provide information in relation to the road transport industry generally, rather than long distance drivers. Not all award breaches related to wages although they represent the bulk of enforcement activity. In the three years to July 2000 the NSW Department of Industrial Relations initiated 193 prosecutions (about 5.8% of all department prosecutions) involving a total of 40 employers and resulting in the recovery of $190,000 in entitlements and the imposition of penalties totalling $180,000 (W. McDonald, Director General, correspondence 25 August 2000). These figures did not include complaints made to the Department through its contact centres and settled during the investigation phase.

In Queensland, the Department of Employment, Training and Industrial Relations received 1480 complaints in the last five years resulting in 83 prosecutions. Correspondence from the Minister (Paul Braddy correspondence 1 September 2000) noted that some complaints would involve more than one breach and added:

The breaches are reported to be difficult to prosecute as driver logbooks are said to be incorrectly completed in many areas. In this regard, driving in excess of twelve hours per day, because it is illegal in Queensland, often results in drivers being paid for hours not recorded in logbooks at less than award rates.

The observation provides an important award enforcement dimension to the problematic link between logbooks and paid time raised earlier in this Report. It is unlikely this problem is confined to Queensland.

In South Australia in the five years to July 2000 the Department of Administrative and Information Services received 372 complaints in relation to transport award breaches, of which 284 were sustained (Robert Lawson, Minister for Workplace Relations, correspondence 13 October 2000). During the same period three prosecutions were initiated and eight infringement notices served for alleged breaches. Of the 372 complaints, 41 were made under the federal Transport Workers Award (all made between 30 September 1998 and 31 July 2000) and 36 of these were sustained (no prosecutions were commenced or infringement notices issued in relation to these federal breaches).

In Tasmania, four cases of underpayment (two under the Transport Workers General Award and two under the Carriers Award) were referred to the Tasmanian Industrial Commission and in each orders were issued against the employer. Since February 2000 Work Standards Tasmania has dealt with federal awards and by 5 September it had dealt with four cases of wage arrears (Deputy Premier Paul Lennon, correspondence 5 September 2000). Of these, one case under the Transport Workers Passenger Vehicles Award were settled by negotiation, of two cases under the Transport Workers Mixed Industry Award one was settled by

negotiation while the other is still under investigation, and one case under the Transport Industry Award is still under investigation.

In Western Australia the Department of Productivity and Labour Relations dealt with 156 formal inquiries (4.1% of all inquiries) under the Transport Workers General Award, most of which related to underpayment of wages and all resolved without prosecution (Cheryl Edwards, Minister for Labour Relations, correspondence, 17 August 2000).

With regard to the federal jurisdiction, information was obtained on award breaches and wage recoveries for a number of transport awards. Again, as in the state jurisdictions it appears that since the mid 1980s the federal inspectorate has undertaken little proactive inspection (especially that of a random nature designed to maximise impact), relying mainly on complaints to detect breaches (Bennett, 1994:149-164). During the 1980s and 1990s most recorded breaches occurred under the Transport Workers (Passenger Vehicles), Transport Workers (Interstate Drivers), Transport Workers and Transport Workers (Mixed Industries) Awards. Information obtained from the Department of Employment, Workplace Relations and Small Business (Correspondence, Fisher 8 November 2000) indicated that the Office of Workplace Services investigated 118 claims of award breaches under the Transport Workers (Long Distance Drivers) Award 1993 between 1995/96 and 2000/2001(part). Of this total, 12 occurred in 1995/1996, 30 in 1996/97, 58 in 1997/98, 6 in 1998/99, 9 in 1999/2000 and 3 in 2000/2001. As in other states, the claims mainly related to underpayment of wages and trip money. Of the 118 claims, 60 or just over half were sustained following an investigation (to initiate a claim a signed claim form has to be lodged with the Office) and apart from two recent cases all these were finalised.

In general responses from the jurisdictions indicate that award compliance complaints are common in road transport although the precise number pertaining to long haul trucking is unknown. The responses tend to confirm the claim of the NSW Road Transport Association that enforcement activities are largely in response to complaints rather than proactive auditing. It recognises this approach may be a consequence of limited resources. Given evidence presented by drivers to the Inquiry expressing fear of being victimised for making complaints, especially those in small to medium firms outside the major urban centres, the Report has a serious concern about the effectiveness of existing enforcement arrangements as they pertain to the long haul trucking industry.

Awards, Determinations, Agreements and Owner/Drivers

As has already pointed out, in the long haul road transport industry employee drivers directly compete with owner/drivers for work. Owner/drivers compete for business with companies using employee drivers and companies may also elect to use owner/drivers so competition may occur between companies using employee drivers and another using subcontracted owner/drivers or even varying combinations of both. Unlike employee drivers there is no minimum wage rate for most owner/drivers in Australia so this competition may occur on the basis of labour costs where the firm using an employee driver is placed at disadvantage. Owner/drivers become a tool to drive down tender costs and this may be especially attractive to larger operators who, to put it bluntly, may find it more difficult to cut costs by failing to meet award conditions to employer drivers than smaller firms. As was also noted earlier, there is evidence to suggest some larger companies have moved increasingly over to subcontracting to other transport firms (generally but not always small) and owner/drivers in recent years and that has placed even greater pressure on companies heavily relying on employee drivers. It could be argued that while ever there is pressure from owner/drivers prepared to accept freight rates that translate into below award wages in order to try and survive then the resulting competition with employee drivers will provide and ongoing inducement to award evasion. If award entitlements 'discounting' is as high as the TWU has claimed (pay rates amounting to 50% of legal entitlements) then the discounting of rates paid to owner/drivers

needs to be even more substantial for them to retain competitiveness. In the end, a spiral of undercutting could occur, in the worst cases bolstered by fraudulent taxation (at least until recently) and social security arrangements. Several submissions drew attention to these problems. Similar problems have been identified in other industries with elaborate subcontracting networks such as home-based clothing manufacture (in the late 1990s the Australian Taxation Office estimated an annual loss of revenue of around $80 million in this industry alone). To the extent these practices occur they can be seen to represent a hidden subsidy to freight rates but there was insufficient evidence to make any further observations on this issue.

The threat to award rates posed by undercutting by owner/drivers has long been recognised and indeed attempts have been made to deal with it by industrial relations tribunals making determinations setting minimum rates for them in several jurisdictions. This approach has been rendered increasingly ineffective in recent years and again the NSW Road Transport Association believed this has had serious implications for safety.

New South Wales is the only state that regulates the terms and conditions of engagement of owner-drivers (Contract Carriers) by Principal Contractors. These are known as Determinations and they can be considered as "Awards for Subcontractors". There are quite a number of Contract Determinations in NSW applicable to varying types of transport eg:

The General Carrier (Contract) Determination
The Car Carrying (Contract) Determination
The Courier and Taxi Truck (Contract) Determination

There is, incidentally, an Interstate Carrying (Contracts) Determination also, however for some years now this Determination has not been updated in rates due mainly to its widespread breach and lack of practical use. The problem here is that it was only possible to regulate journeys that commenced in NSW, and that travelled over a state border. Compliance thus caused NSW based companies to be at a disadvantage to interstate based companies who could travel into NSW and backload back.

There is no doubt that failure to adhere to Awards and Determinations in NSW does enable an unfair business advantage to be gained over those companies that do comply. The unfair advantage is then "balanced up" by unscrupulous companies by reducing safety considerations and breaking traffic laws eg driving hours, rest breaks, speeding etc (written submission, NSW Road Transport Association, page 9).

As noted by the NSW Road Transport Association (written submission, pages 10-11), there have attempts to set up Australia-wide agreements on minimum rates, most notably the Interstate Owner-Driver agreement reached in the aftermath of the 1979 Razorback truck blockades. Based on a minimum 22 tonne load and updated every six months by a costing committee of both employer and union representatives, the agreement ultimately failed to have a serious effect. Crucial limitations were its status as a 'recommendation' rather than having legislative backing and the consequent lack of enforcement/compliance (the rates were only adhered to in 'union' yards), problems in costing (escalation provisions)/determining market rates and the failure to cover specialist trucks such as refrigerated trucks and tankers. Moreover, the agreement was seen to clash with the de-regulation/free market philosophy of the 1980s and received little if any endorsement from government. Indeed, several submissions argued that the targeting of anti-competitive (co-operation on pricing) arrangements amongst the major freight forwarding companies by the Trades Practices Commission in the early 1990s seriously weakened the agreement's already limited chance of success. The NSW branch of the TWU (oral submissions, Michael Kane and Tony Sheldon) supported this interpretation, arguing the union lost a considerable number of owner/driver members in the long haul sector as a result of the decision. These observations afford some

parallels with changes to regulatory arrangements in the USA discussed later in this section of the Report.

The NSW Road Transport Association (written submission, page 11-12) argued disparities in freight movements between different centres made the setting of rates difficult. These imbalances are exacerbated where a large number of small operators are involved since larger companies are in a better position to organise offsets and equalise returns. The Association was of the view that owner/drivers should be remunerated fairly for all the costs associated with providing a service but argued, given market forces, this was beyond the control of the industry itself.

The TWU has sought to demonstrate that a practical freight rate calculator could be devised for owner/drivers based on them drawing a wage at the same level as award rates while covering operating and fixed costs and return on invested capital. The union engaged a consultant, Tasman Asia Pacific to evaluate the rate calculator.

Aside from the issue of calculating an acceptable rate, the central problem with previous attempts at contract determinations has been the issue of coverage/enforcement. Where these issues can be overcome there is some evidence that these determinations can have an effect. According to Bob Angus, the General Manager of Boral Transport in NSW (oral submission) a contract determination has been effectively implemented in relation to the local owner/drivers involved in moving quarry materials. Indeed, one effect of the determination of cartage rates (especially escalator provisions), according to Angus, was to give a financial advantage to fleet operators in tendering for work, resulting in greater use of employee drivers. While owner/drivers are unlikely to view this as an ideal outcome it does protect the earnings of those who do obtain work and, to the extent fleet operators have superior OHS performance, may result in improved OHS outcomes.

In the past year there has been evidence of a growing national recognition of the threats to safety posed by very low payments to owner/drivers. In October 2000 the president of Natroad, Doug McMillan, called for sustainable freight rates. While not condoning recent blockades by owner/drivers, McMillan said these actions and associated debate over high fuel prices and GST-related costs were a catalyst for a long overdue assessment of rates. McMillan argued small operators were chronically underpaid, with the rates paid to some owner/drivers barely covering fuel costs, and urged users of trucking services to take responsibility for the ongoing viability of industry:

Users of trucking services are turning a blind eye to this trend and are putting pressure on operators to provide services at even lower rates than previously, all in the interests of short term commercial gain (Natroad calls for sustainable rates, 2000).

Two months earlier in August 2000 Senator Ron Boswell, Secretary to the federal Minister for Transport, stated:

Maintenance and general safety issues become compromised if subcontractors are forced to work for unviable rates (Lewis, 2000:7)

At the same time, chairman of the Australian Competition and Consumer Commission, Professor Allan Fels, announced that the Commission was investigating a number of instances of alleged unconscionable conduct in the transport industry. He warned major trucking companies that they could be committing breaches of the Trade Practices Act if they forced subcontractors to accept cut-price haulage rates (Lewis, 2000). While supporting these measures the Inquiry would note that the evidence presented to it indicated that cut-price haulage rates were the norm for owner/drivers not an aberration and the pressure to impose these rates came from consignors and customers, not simply large transport companies. The

Inquiry was also repeatedly told the increased use of subcontract arrangements by at least some major transport companies was a response to the intense competition for freight tasks and the not unconnected pressure for lower freight rates from clients. That is, as discussed elsewhere in this Report, large companies were resorting to subcontractors in order to secure a contract at a reduced rate and still make a return by 'squeezing' the rate paid to the subcontractor. It is not clear that targeting large transport companies will succeed in reversing this practice because it fails to address the underlying cause and may, at worst, simply lead to other companies filling the gap of those forced to withdraw from these practices by legal action.

In recent times there have been a number of well-publicised protests by owner/drivers calling for a national code that included minimum freight rates. Thus far, the federal government has refused to entertain calls for minimum freight rates. Some submissions to this Inquiry also expressed reservations about minimum freight rates, seeing the solution more in terms of a national voluntary code of conduct, voluntary accreditation and improved business skills for owner/drivers:

...work has been conducted by the ATA and the federal government in respect of their code of conduct and I certainly embrace and endorse the that work and believe that it can be a contributory factor to continuing improvement in on-road practices. I would make this statement that no one in this industry is owed a living and if we start to regulate to the lowest common denominator then we will be doing efficient businesses, honest businesses, a disservice. We have to ensure that people understand that they are running a business not just driving a truck and they adopt business principles that allow them to operate viably (oral submission, Peter Garske, Executive Director, Queensland Trucking Association).

It has to be said that of the submissions made to this Inquiry, opposition to minimum freight rates for owner/drivers was, very much, a minority viewpoint. Ultimately, as far as this Inquiry is concerned the only relevant issue to be considered is whether there is a link between the rates paid to owner/drivers and safety and if so, how should any adverse effects be mitigated. The answer to these questions can be stated as follows. First, the evidence considered by the Inquiry, and far beyond just the views expressed in various submissions (including surveys), indicated that there is a significant connection. The problem extends to employee drivers because of they are, in many instances, in direct competition for work/freight tasks with owner/drivers. Second, without gainsaying the problem of inexperienced/inefficient operators, for reasons identified elsewhere in the Report, including the weak bargaining power of owner/drivers, it is entirely improbable that voluntary accreditation or enhanced business skills will remedy this situation. While the Inquiry heard reference to enhanced quality of services, the majority of submissions and other evidence indicated that, with some exceptions, customers were overwhelmingly concerned with obtaining the lowest cost for moving their freight. While ever there are owner/drivers with little bargaining power or under sufficient financial pressure to take a job at a lower price, other operators will have to compete. Enhanced business skills alone will not save operators from the pressure of competition and freight rates which research by Dean Croke and others indicates are so low as to threaten the viability of many operators. In sum, low freight rates are, in main, a cause not a symptom and to the extent this threatens safety must be directly addressed.

In as much as evidence indicates that the failure to pay adequate returns to owner/drivers poses a threat to safety of drivers and the community, and entails regulatory evasion that punishes legitimate operators, there is an overwhelming case for intervention to the point where this risk is removed. That is, there is a need to establish a rate that ensures that safety is not endangered and competition can occur on a level playing field where minimum legal standards are met. This is not the same thing as guaranteeing a comfortable livelihood for owner/drivers or establishing minimum

freight rates for the entire industry. Rather, it merely sets a minimum rate for owner/drivers based on safety considerations alone.

As a final point it is also essential to consider another aspect, namely the issue of enforcement of legal entitlements. As with employed drivers, the Inquiry heard evidence that at present owner/drivers sometimes face problems in getting paid their legal entitlements under the contract. A far more frequent problem is being paid promptly for work undertaken. Delays to payment exacerbate the financial pressure on owner/drivers and, as highlighted by the Driver Survey, were seen as a critical safety issue. At present, owner/drivers simply lack the bargaining power to pursue payment issues. Resort to the courts is an expensive and time-consuming remedy that might also jeopardise future work. In short, delayed payment is a safety issue in its own right that needs to be addressed. Hence, it is important to ensure that any determination of a 'safety rate' also includes a mechanism that will secure prompt payment.

Conclusion

Minimum payments made to both employed drivers and owner/drivers have a critical effect on safety but at present there are significant enforcement issues. At present the minimum award rates for drivers is established under a mixture of state, territory and federal industrial relations legislation, with some state determinations covering owner/drivers (not all of which appear to be effectively implemented). While a uniform minimum rate covering the entire industry would have advantages (so long as achieving consistency did not entail a lowest common denominator outcome) this would be difficult to achieve. As Associate Professor Johnstone notes in his report (Appendix 2) there are number of ways of addressing this issue. However, a resolution of the problem at the national level is unlikely due to political factors as much as institutional or regulatory difficulties.

Leaving this issue aside, an arguably far more pressing concern is to ensure drivers are paid the rates they are entitled to. As far as this Inquiry can determine, that excluding major trucking firms evasion of award entitlements to employee drivers is widespread and a byproduct of intense competition, low freight rates, undercutting by owner/drivers and fear amongst employee drivers of losing their job. Existing state and federal compliance measures are overwhelmingly complaint-based, an approach which both industry associations and the union agree is seriously flawed, since drivers fear being victimised or losing future employment prospects if they make a complaint. Drivers making submissions to the Inquiry reinforced the veracity of this interpretation. Further, the move to enterprise agreements and Australian Workplace Agreements has exacerbated the situation, making it more difficult for drivers to determine compliance with the award baseline. Independent vetting by the union or other interested parties is also extremely difficult if not impossible since unlike awards (which are public documents) these agreements are often treated as private documents between the employer and employee/s concerned. Finally, like the recent federal fatigue inquiry, this Inquiry noted with great concern evidence it received on Australian Workplace Agreements which had been ratified that presumed average speeds that may well give rise to a breach of road transport legislation, occupational health and safety legislation or both.

Minimum payments made to owner/drivers are also a serious issue, since these drivers directly compete for work with employers/employee drivers and financial pressures occasioned by inadequate returns lead fairly directly to compromises in terms of vehicle maintenance, driving hours, drug use and other critical safety issues. There is a serious imbalance in the present system which sets a minimum wage rate for one group of workers in an industry while another group undertaking precisely the same tasks and, indeed, competing with the former for work, is exempted. It creates a strong inducement to use subcontracting and shifts in employment status as a means of gaining a competitive advantage. This might be acceptable in some industries but not in the intensely competitive road transport industry

where efforts to remain viable by owner/drivers and transport firms often lead to compromises on safety that, in turn, pose a serious risk not only to drivers but other road users. There was almost universal agreement amongst the parties giving evidence to this Inquiry that minimum freight rates were a significant safety issue, though some debate as to practical methods of addressing this. The Inquiry believes a practical solution can be found and a procedure to achieve this is proposed in the final section of the Report.

The problems just identified require urgent attention and a number of specific recommendations to achieve this are to be found in the final section of the report.

4.8 A Broader Assessment of Existing Enforcement Practices

Beyond any consideration of enforcement in relation to specific categories of offences such as speeding and drug use, there is a need to recognise a number of issues that affect enforcement more broadly or in connection to an array of offences. Several of these issues were touched on in the previous subsections. However, it is important that these issues be addressed in some depth, as the next subsection will attempt to do. In the course of its investigation the Inquiry uncovered considerable evidence pertaining to the effectiveness of existing enforcement practices. The risk of detection and prosecution, as well as the level and nature of the penalty imposed on offenders as well as which category of offenders are targeted (where the commission of offences involve multiple parties) influence the effectiveness of enforcement.

4.8.1 Inadequate Resourcing and the Role of 'Smart' Compliance

In addition to criticisms of specific activities in relation to enforcement of speeding offences and the like the Inquiry received submissions and other evidence raising more general criticisms of existing enforcement activities.

The Inquiry received a number of submissions critical of the RTA and its overall strategy in relation to enforcement. Several submissions were critical of reorganisation within the RTA over the past decade in terms of its effects on on-road enforcement. After detailing reorganisation of the DMR/RTA compliance network, inspector rostering (and the secrecy of this) and several other changes an obviously frustrated ex RTA inspector made the following observations:

The bureaucracy in the RTA is almost impossible to convince about an argument - you just cannot make them understand. I have worked with the RTA for many years as an inspector, I worked in Sydney to start with and then was sent to [names country town]. I then came back to Sydney and worked in the corporate area. It wasn't until I worked in the corporate area that I began to understand what we used to go through on the roads as an inspector, why we had these silly positions being made. Because you just cant make the corporate people listen, they have got no conception whatsoever about basic enforcement issues…When I was working up here on a secondment I took one of the directors of [names RTA section]. I took him on a trip one night, we left here and drove to [names town] to show him what actually went on the highway and I think he learnt more in those four or five hours than he probably learnt in 15 years before as a public servant (oral submission, former RTA inspector).

Tensions between field-based inspectors and senior policy staff are by no means uncommon in enforcement agencies and so these comments should be treated with a degree of caution. What can be said is that the Inquiry received numerous submissions from drivers and operators urging that those involved in enforcement should spend some time in a truck so as to gain insights into the nature of the trucking industry.

At least one transport association accused the RTA of being too bureaucratic/rigid as well as failing to coordinate the activities of its regional inspectors. This association made similar

criticism of the NSW Police Service. It echoed criticism that enforcement agencies needed to understand the industry but argued this did not entail regulatory capture as a region where it felt it had one of the best relationships was one of the toughest. Like a number of others making submissions to the Inquiry the association referred to a recent decision regarding a ban on coloured bug-deflectors (based on the findings of a coronial inquiry) where it was claimed trucks were issued with defect notices without warning. Again, without doubting the veracity of some points made, these criticisms need to be interpreted cautiously.

Another criticism was the overall level of resourcing of enforcement activities. This criticism was made not only by union representatives, insurance companies and those currently or formerly involved in enforcement (such as ex RTA inspectors or Police) but also by industry representatives. For example, the Australian Trucking Association (ATA) argued that enforcement was severely under-resourced and that the situation had been exacerbated by:

the reduction in real numbers of enforcement officers dedicated towards the industry combined with an increase in vehicle numbers (written submission, ATA page 4).

The solution proffered to this situation did not amount simply to an infusion of additional resources. Rather, a number of submissions called for more effective use to be made of existing enforcement resources with several (such as those of Queensland Transport, the ATA, QTA and NRTC) making specific reference to the need for 'smart compliance'. Smart compliance received widespread support amongst industry, agency and regulatory body representatives that attended the National Enforcement, Viability and Safety Summit held in Albury in early 1999. In its written submission, the NRTC argued that smart compliance as a far broader approach to compliance than conventional compliance and enforcement provisions, one that enhanced compliance outcomes and complemented the command and control approach of new legislative provisions. The elements of 'non-legislative' compliance strategies identified by the NRTC included:

- consistent, effective and well-targeted enforcement
- privileges and incentives-based strategies
- education and training of enforcement officers and industry
- effective communication between enforcement officers, regulatory authorities and industry
- well-targeted and nationally consistent enforcement practices; and
- ongoing monitoring, researching and review of the effectiveness of enforcement outcomes

The NRTC argued that these elements could be incorporated into a multi-faceted compliance program to improve compliance outcomes for road transport.

For its part the ATA defined smart compliance as follows:

Smart compliance is all about utilising minimal enforcement resources in the most effective and efficient way. That is, targeting the bad elements of the industry whilst at the same time recognising operators, such as TruckSafe operators, for being leaders in the culture reform of the industry.

In short, as far as the ATA was concerned, smart compliance was achieving an optimal combination of external regulation and voluntary compliance programs.

At the same time, the NSW Road Transport Association stressed self-accreditation and 'smart compliance' did not remove the need for rigorous external enforcement, and further, there was a need for rigorous external checks on self-accreditation programs:

This Association is of the view that conventional enforcement on the road, and conventional compliance procedures are essential as well as smart compliance and self-accreditation. There are, at present, too many loopholes in the self-accreditation and smart compliance process to permit a winding back of conventional enforcement.

In fact, enforcement of chain of responsibility and Occupational Health & Safety legislation is essential if safety is to be improved. This will have to be done at some "third party" level by some separate organisation if it is to mean action is to be achieved and the general public appeased… The Association believes that self-accreditation must be backed by on road enforcement if we are ever to convince the public that the industry is cleaning up its act (written submission, NSW Road Transport Association, page 17).

The argument that internal systems may help free up resources and enable a two track system is logical and has been promoted in both by policymakers and academic researchers in the field of regulatory strategy (see Gunningham and Johnstone, 1999, 2000). However, they also note that industry (such as the level of competition), firm (such as size) and employment characteristics need to be taken into account when deciding which of the two-track system is most appropriate. Further, in keeping with the NSW Road Transport Association's views, genuinely independent auditing of internal regulation systems is essential to ensure the system does not simply amount to a form of 'paper compliance' unmatched by actual practices (for a discussion of this and other system-requirements see Frick et al, 2000). The Report will return to these issues in a later section where the effectiveness external/mandatory and voluntary/self-regulatory models in achieving compliance in the long haul trucking industry are examined in some depth.

As the NRTC's written submission readily points out, smart compliance is in its developmental stages. A number of the components, such as more targeted enforcement, are likely to achieve widespread approval within the industry at least in principle (the specific determination of who is to be targeted and why may involve some healthy and hopefully constructive debate). As already implied in the last paragraph, other issues such as the degree of reliance to be placed on incentive-based schemes as a substitute for external regulation are likely to prove more controversial. There has already been a shift to voluntary accreditation and alternative compliance regimes in road transport and the role and effectiveness of some of these is examined in some detail below. The recent adoption of smart compliance – itself rather intriguing since many of its key components have been the standard fare of regulatory strategy elsewhere over a number of years – means that the Inquiry is unable to make any judgement on its effectiveness. While a number of the principles underpinning it appear sound, there are simply too many as yet unanswered questions. What is a little concerning, however, is that some elements of the package such as voluntary accreditation/alternative compliance regimes that have been around for a number of years have not, as far as this Inquiry could determine, been subject to rigorous independent assessment. It might have been considered logical for the NRTC to have already sponsored such assessments as part of this shift (especially given the controversy surrounding a number). The last element of smart compliance identified by the NRTC (see dot points above) is ongoing monitoring, researching and review of the effectiveness of enforcement outcomes. This appears to be a recent discovery. As highlighted below, the NRTC has been far more active in drawing up new regulatory regimes and compliance models than assessing their effectiveness.

4.8.2 The Preoccupation with Driver Offences and Inadequate Investigation

Penalties are manifestly inadequate and do not properly target the prime offenders. The possibility of being detected versus the additional revenue dollars achieved by cheating the system outweighs any real concerns about current penalties applied. Too often the driver is

the easy target to bear the burden of penalty (written submission, Victorian Road Transport Association).

When there is evidence that the driver of a heavy vehicle may have caused the death or serious injury to road users or other parties there is almost certain that charges will be laid by regulatory agencies. In the case of death a charge of manslaughter is common. This response is entirely appropriate but there are two basic imbalances in the existing equation.

First, recent court cases and coronial inquiries have pointed to at least contributory negligence on the part of transport companies or other parties (such as pressuring the driver to work excessive hours or supplying drugs). However, this has hardly ever led to the laying of serious charges (under the OHS Act, for example) against those parties. In other words, the focus of enforcement remains largely confined to the driver. This problem appears to apply to all jurisdictions as some recent cases illustrate.

One Victorian case involved the death of a 22 year-old driver in February 1996 when his small cattle truck was rear-ended by a semi-trailer in February 1996. It was later revealed that at the time of the incident the semi-driver had been working up to 14 hours a day for 18 consecutive days. In sentencing the driver to three years gaol (with a minimum two-year non-parole period) the County Court Judge observed:

Caught up in a very competitive, aggressive industry whose habits all too frequently spill over onto roadway behaviour, Mr Braun (the driver's employer) was, in my belief, negligent in his supervision, clearly had little interest in the log book and left too much to driver discretion (*Age*, 1998 cited in Perrone, 2000:160).

Despite these comments, no charges were laid against the employer.

The focus on culpability on drivers and failure to pursue the legal responsibility of employers and other parties even where there is evidence to suggest such action is warranted sends very poor signals to the industry and its clients about appropriate modes of behaviour on their part. Although some moves are being made to address this they are at present too insubstantial to have any real likelihood of affecting a significant change.

Second, and at least equally important, when a truck driver dies in an highway/on-road incident there is very seldom an investigation of possible corporate responsibility, let alone the launching of a prosecution. In New South Wales we were unable to discover any investigation or prosecution by WorkCover on the basis of the on-road death of a long distance truck driver although at least one counterpart agency namely WorkCover in Victoria has begun to address this issue.

Particularly in relation to fatigue-related single vehicle incidents a preliminary investigation is at least warranted. Without some level of investigation, serious breaches of OHS and other legislation are likely to go undetected. The problem is not confined to road transport but it appears to be particularly serious in this industry. In this regard the Inquiry is especially indebted to recent research by Santina Perrone on the circumstances surrounding and regulatory response to all work-related fatalities that occurred in a four-year period in Victoria. This research, which was based on the careful identification and sifting of a vast array of diverse materials, is extremely rare. It offers potentially unique insights into the regulatory response to workplace fatalities, including those occurring in road transport. In her attempt to identify instances of negligence connected to work-related fatalities in Victoria in the years 1987 to 1990 Perrone (2000) carefully sifted WorkCover, coronial inquests, court proceedings and other records of investigation. She found that of 258 deaths occurring in a corporate context, in 55 cases there was insufficient information to determine the negligent contribution of the employer and transport fatalities comprised almost three quarters of these

(74.5%). Perrone (2000:45) examination of the reasons for this and its implications are particularly pertinent. She noted that the relevant OHS agency (then known as the HSO) did:

...not investigate traffic fatalities as a matter of course, particularly those involving trucking collisions occurring en route during the course of transporting livestock and other freight. This is despite the fact that as previously stated, transport fatalities constituted the largest single category of overall fatalities in the sample.

This lack of attention to trucking fatalities is particularly concerning in the light of findings relating to the involvement of alcohol and other drugs in such incidents. Whilst in total, only nine cases were identified whereby it was ascertained through the course of toxicological examination that prescription stimulants and/or illicit drugs (amphetamines, cannabanoids, morphine etc) were present in the body of the deceased worker at the time of the fatality, six of those cases (66.7 per cent) involved the trucking industry. Similarly, of the twenty two cases where alcohol consumption was an issue, nine of those (41 per cent) were situated in the trucking industry.

A report released by NOHSC (1992) confirms that drug consumption is a significant feature of the long distance road transport landscape with 33 per cent of those truck drivers interviewed admitting to having taken drugs on the job. A four-year drugs and driving study conducted by the Victorian Institute of Forensic Medicine, produced similar findings. Of the 1054 Victorian, New South Wales and Western Australian driver fatalities examined in that study, 40 per cent were found to have involved drugs, including alcohol (cited in Carson, 1997). Further evidence is to be found in the outcome of a South Australian police investigation of illicit drug use in the trucking industry. During the official period of "Operation Nightrider" (July – October 1992), 90 per cent of drivers stopped by police were found to be using drugs or in possession of them (cited in Cant, 1998b).

Perrone argues these problems are mirrored in terms of police and coronial investigations.

Compounding such regulatory disregard is the observation that police investigations conducted into such fatalities almost invariably fail to delve into the deceased's routines and responsibilities, working conditions and employer demands. Although witnesses at the scene of a collision are routinely questioned, police investigations are invariably concerned predominantly with peripheral issues such as road measurements and configurations, the visibility of road safety/speed sign, weather conditions, the mechanical soundness of the vehicle and the like. This technical focus on immediate cause basically serves to decontextualise the incident, so that it simply becomes another road "accident" rather than a work-related harm; a purely unplanned and unintentional occurrence. Only on rare occasions were depositions sought from employers, and when interviews did transpire, the line of questioning adopted proved inadequate, with relevant organisational issues not ordinarily canvassed (for similar arguments regarding the short-sightedness of investigations in the United States, see for example Knestaut, 1997).

...The dissimilarities in investigative rigour further extend in the coronial arena. Unlike the mandatory requirements to conduct an inquest into the circumstances surrounding a suspected homicide...coroners have a considerable degree of discretionary latitude where work death is concerned and that discretion is regularly exercised. During the period under review, coroners chose to dispense with a formal inquiry in 32% of work-related fatalities (N=112 cases).

Of those cases which underwent a review short of formal inquest, the transport industry once again featured prominently, surpassed only by the farming industry. Unfortunately, those transport cases that were the subject of coronial review often failed to yield vital information that would have shed light on systemic shortcomings. Pertinent organisational questions often

remained unexplored: for example, were unscrupulous employers subjecting workers to unrealistic work schedules that discouraged sufficient rest periods and perhaps encouraged substance abuse? Were regulations mandating the possession and maintenance of logbooks enforced? Were logbooks doctored and/or speed-limiting devices circumvented? Were correct loading procedures observed? Was the employee provided with a roadworthy vehicle, adequate training, instruction and supervision? (Perrone, 2000:46-47).

Perrone examined her sample of work-related fatalities to identify instances where the available evidence indicated prosecutable corporate negligence and categorised this according to whether the negligence was of a minor, intermediate or extreme nature. With regard to the transport industry cases where evidence was sufficient to make an assessment Perrone determined that 23 of the 24 fatalities involved intermediate company negligence. In construction and manufacturing, by way of contrast, 50% and 40% of cases respectively were determined to involve extreme negligence (Perrone, 2000:69-70). However, Perrone added an important rider to this that is consistent with observations above about the number of transport cases where evidence was too poor to make any determination whatsoever as to negligence.

It is imperative here that we recapitulate the poor state of investigative scrutiny extended to the transport industry and stress the urgent need for ameliorative measures. The failure to thoroughly consider the circumstances surrounding trucking has meant that in most cases not even a minimum degree of corporate responsibility could be ascribed, despite the fact that information suggested differently. For example, in a number of instances, long distance truck drivers appear to have suffered fatigue and consequently fallen asleep at the wheel. The circumstances are suggestive of objectionable time schedules blindly followed in the impetus to undercut competitors, but investigations almost invariably failed to explicitly address this issue. Had such issues been considered, then perhaps more of these fatalities would have been categorised as extreme negligence cases (Perrone, 2000:70).

The next step is, of course, to examine the number of cases where a prosecution occurred and here, again, Perrone found that the transport sector constituted a problem area. Perrone (2000:193) identifed 89 fatalities containing a degree of negligence warranting prosecution, 24 of which were in transport. Only 14 or around 60% of these transport cases were known to the OHS agency (comparable to services but far below the 90-100% figure for all other industries) and prosecution occurred in only six cases. The latter represented only 42% of known transport cases or 25% of all relevant transport cases and, again, both figures were well below the comparable figure for all other industries aside from Services. In sum, while transport and service sectors contributed a greater volume to Perrone's sample of work-related fatalities than manufacturing or construction the latter two – both a traditional jurisdictional focus OHS agency activities – attracted far more investigation and prosecutorial activity. In other words, Perrone found a substantial inadequacy in OHS agency responses to work-related fatalities in the transport industry.

No comparable research has been undertaken in New South Wales, and it would also be useful to consider fatalities in recent years to see if the response had changed. Nevertheless, Perrone's analysis is consistent with what material is available such as Hopkins' study of transport fatalities in NSW. Hopkins (1992) found that incidents involving trucks (most of which were travelling long distances) accounted for more than a quarter of work-related fatalities in NSW in 1984. He argued this was caused by drivers spending what should have been rest periods loading and unloading, itself a partial product of economic pressures generated by freight forwarding businesses which necessitated long hours of work. Hopkins argued while these circumstances could constitute a breach of the general duty for employers to provide a safe system of work under the NSW Occupational Health and Safety Act, 1983 none of the incidents had been investigated by the responsible agency (now known as WorkCover). He argued (1992:243) a few precedent-setting court cases might encourage the industry to provide safer systems of work. It hardly needs to be added that this approach, used

with some success by the EPA and WorkCover itself in relation to the labour-hire industry, has yet to be tried in road transport.

Perrone's analysis also found support in submissions made to this Inquiry. For example, a number of operational (NSW) police could not understand why WorkCover did not investigate serious on-road incidents involving heavy vehicles with a view to laying charges. One also expressed surprise that the families of drivers who were killed did not take civil action against companies, arguing there would be enough evidence in the majority of cases to suggest the work practices imposed on them were responsible for the incident:

I'm really surprised that family members of drivers who are killed on the road, haven' t under civil law, sued the pants off companies. I believe that families of drivers would have so much evidence to offer…to say that work practices by their husbands [were to blame] (oral submission, police officer southern NSW).

Concerns about WorkCover investigation into fatalities were raised in submissions from TWU and CFAT representatives.

…I've got a major concern with WorkCover and its role in investigating accidents – fatal accidents… recently having to sit on the advisory group for WorkCover for transport and storage, I asked the question 'what's the process for WorkCover to liaise with other departments and how they call in etc?' There were a lot of blank looks and some half-hearted undertakings given to produce documents (oral submission, TWU official, Newcastle).

There is some evidence of a growing interest in prosecuting on-road transport incidents at least in Victoria (though not NSW). However, this trend is insufficient to invalidate Perrone's overall assessment. In the absence of compelling evidence to the contrary, and given the available evidence it is the firm view of this Inquiry that there have been manifest failings in the attempt to detect and prosecute corporate negligence in relation to death of long distance truck drivers.

4.8.3 Recent moves to shift the focus of enforcement: Chain of Responsibility

Who are the responsible [parties]? The cowboys are also in the boardroom and the government. People will try to succeed, when the odds go against them the first thing to suffer is safety (oral submission, partner of owner/driver, Queensland).

We make reference to chain of responsibility and we acknowledge there is a move and there's a lot of support for the introduction of that. I think what we are trying to say is if you going to introduce that just make sure that when you plug us into the chain that you have an accurate view of where we fit (oral submission, Bill Healey, ARA).

The introduction of chain of responsibility provisions into road transport legislation has been heralded as the most significant regulatory revision to affect the trucking industry in at least a decade. Amongst those making submissions to the Inquiry there was virtually unanimous agreement that the pre-existing regulatory framework and enforcement regime had been too driver-focused and there was a need to hold other responsible parties accountable. Virtually all parties making submissions to the Inquiry supported chain of responsibility legislation in principle, although there was some debate as to its practical effects. Further, as the above quote from Bill Healey of the ARA indicates, there is concern amongst parties using road transport that new regulations using this approach should noted misunderstand the nature of contractual arrangements (for example, who is the load owner?). Nor should it impute to load owners, consignors and consignees degrees of influence over road transport operators they don't actually possess (for a more detailed consideration of this issue see Section 3). The ARA emphasised that major retailers relied on road transport in a variety of capacities but for

much inbound transport they were not the load owner. These deliveries were largely made to warehouses owned by the major retailers (though some large transport companies also maintain warehouses as part of a fully integrated service). At the same time, the ARA recognised that deliveries between stores were a different matter (although the ARA's written submission had focused on interstate trucking, hence the note of explanation in the following quote):

The issue for us is where do we fit into that [chain of responsibility] and who owns the load. And for us we've tried to distinguish between the whole concept of the inbound load and the outbound load. Perhaps the variation of the 100 kilometres and the odd internal delivery from one store to another, from Sydney to Newcastle, may change the situation. Perhaps we do have more internal deliveries in that context. …We were focusing on the heavy loads. We were focusing on the big long haul drives into warehouses in the majority of cases. And all the indications we have is that that load is overwhelmingly the responsibility of the manufacturer or supplier. We have quite sophisticated replenishment systems. Part of the replenishment process is a lead-time for production and delivery and the issue we would challenge is that there is insufficient lead-time. Because if there's insufficient lead time, from the advice we've received its probably because the supplier stuffed up in the manufacturing or their relationship with the transport company (oral submission, Bill Healey, ARA)

This concern is understandable, especially as there is no court case against a customer that might indicate how these new provisions will work (of course the very absence of these cases may be seen as indicating an entirely more sanguine scenario). Indeed, it is an issue that the Inquiry has given very careful consideration to in framing its recommendations viz a viz a code of practice

The issues raised by the ARA also almost certainly reflect a wider concern amongst those using road transport as to how they should comply with their obligations under chain of responsibility. Indeed, if anything the ARA probably has a greater awareness of the chain of responsibility than many other bodies covering long haul transport users. As noted in Section 3 (see also below) some transport users are looking towards special contract provisions or protocols to govern their use of long haul trucking and the option of model clauses has also been raised. It seems clear to the Inquiry that users of road transport require some education as to what their responsibilities are under chain of responsibility but that, as yet, there have been few efforts in this area. Such an education/awareness raising exercise may include proactive campaigns/publicity followed by some targeted prosecution (along the same lines as those used very effectively by various OHS agencies on occasion). It struck the Inquiry that insufficient attention had been given to this aspect although it appears the NRTC has now recognised the deficiency.

At the same time, it is arguable that the disbelief amongst some customers, consignees etc that they have obligations simply indicates just how backward those involved in the transport chain have been when it comes to recognising their responsibilities. Similar, indeed arguably more encompassing obligations have long existed under OHS legislation but, until recently, have simply not been enforced. Further, the overwhelming majority of submissions to the Inquiry, including those from agencies such as WorkCover NSW (written submission, pages 16-17), were in no doubt as to their ability of consignors, clients etc to exert a critical influence on transport activities. Indeed, this was seen as a critical rationale for chain of responsibility legislation. Most regulatory agencies and many other parties (such as the ATA) making submissions to the Inquiry expressed at the very least in-principle support for the introduction of Chain of Responsibility provisions. This was true not only of NSW-based bodies but also national bodies and those located in other states that made submissions to the Inquiry (including government agencies such as Queensland Transport).

A number of those supporting 'chain of responsibility' raised practical concerns about the enforceability and therefore effectiveness of these initiatives. In its written submission the RTA stated:

NSW recently implemented laws that are ultimately expected to counteract, to an extent, the commercial forces that lead to drivers being placed under pressure to break speed and duty and rest limits. In November 1998, new laws for the management of fatigue in long haul truck drivers commenced in NSW. This law was based on model law nationally developed and agreed through the NRTCs National Reform processes. A key feature of the Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999 is the provision of 'chain of responsibility' offences. These offences impose legal responsibilities on all participants in the road freight task who have the ability to pressure the driver to speed or flout the maximum work and minimum rest provisions.

Although these 'chain of responsibility' provisions have been in place in NSW since late 1998, the RTA is not aware of these provisions being used against a client or consignor in this State. It is difficult to bring a case against an offender under these provisions because hard evidence of the client or consignor having knowingly pressured a driver to violate the speed or duty and rest laws is difficult to obtain. Further, although disaffected drivers occasionally come forward with information, they are often reluctant to give evidence in court, particularly if in so doing so they implicate themselves in offences.

The Queensland Trucking Association (oral submission, Peter Garske) also pointed to the reluctance of drivers to give evidence.

I think for many [drivers] perhaps they see it as an end to a livelihood but I'm not sure what sort of livelihood they've got if they're succumbing to those sorts of pressures…certainly they can't possibly have any quality of life and neither can their families.

In its submission, WorkCover NSW (written submission, page 17) argued that in order for chain of responsibility to be effectively implemented there would need to be more detailed investigation of the antecedents of on-road incidents:

WorkCover submits:

- *That in the investigation of roadway accidents or incidents involving LHT drivers, strategies should be developed to facilitate an examination of the possible antecedent causes of such accidents and incidents so as to ascertain what might be the true cause(s); and*

- *That if such causes, where they are detected, are attributable to management or contractual decisions made by transport industry participants such as trucking companies or consignors, they should be held accountable and liable to prosecution under road safety legislation as intended.*

It should be noted in passing that while WorkCover was referring to the implementation of chain of responsibility under road transport legislation (in keeping with the thrust of its submission. See above), the chain of responsibility can be used in relation to general duty provisions under the NSW Occupational Health and Safety Act, 2000. Indeed, as noted by Associate Professor Johnstone (Appendix 2) these provisions entail a fuller, more all-embracing and more flexible notion of chain of responsibility. The Act, like its counterparts in other jurisdictions, has both chain of responsibility provisions and due diligence notions in the general duties and explicitly in the provisions dealing with director's duties (section 50 of the 1983 Act and section 26 of the 2000 Act). Another issue is the extensive powers granted to WorkCover inspectors to visit workplaces, inspect records and seize evidence. A number of

bodies making submissions to the Inquiry, most notably the Victorian Road Transport Association (which included Roger Sanders, a former police prosecutor) argued that these powers were more extensive than those currently available to the police or RTA inspectors, even under the new chain of responsibility legislation. This is also the view formed by the Inquiry.

Several of the points just raised were reinforced by the submission of the Victorian WorkCover Authority. As noted earlier, in its submission WorkCover Victoria expressed the view that while the NRTC's chain of responsibility framework addressed significant issues it had not been vigorously enforced and the fines were too low. It also pointed to other penalties under Victorian OHS legislation, most notably the capacity to gaol directors found guilty of serious offences under the Act. While this option is likely to be imposed only on rare occasions its presence sends a message about the criminality of these offences and has deterrent effects beyond any form of financial penalty. WorkCover noted that the industry itself is keen to see this option pursued for serious offences. Thus far, the gaol option has been little used. However, there is a discernible move towards pursuing this in a number of jurisdictions (including NSW) and addressing past impediments to successful actions (the Inquiry is also aware of instances where the threat of such an action has caused a major re-organisation of OHS management by an employer). Reinforcing this point, in October 2000 the Victorian Attorney General recently released a draft bill amend the Crimes Act to create a new offence of industrial manslaughter. The draft bill also amends the Occupational Health and Safety Act, 1985 to substantially increase penalties, including a maximum fine of $5 million for industrial manslaughter and $2 million for the offence of negligently causing serious injury (*Workplace Intelligence*, November 2000:1,5-6). The Queensland government has mooted a similar move, issuing a discussion paper detailing a proposed amendment of the Criminal Code to include a new offence of dangerous industrial misconduct carrying a maximum penalty of $502,500 or seven years imprisonment. Nor are these moves confined to Australia. In 1999 two company directors in Britain received a suspended sentence for manslaughter after being found responsible for a fatal road crash because of the excessive working hours that imposed on the truck driver involved (*R v Roy Bowles Transport, 1999*).

There are strong procedural equity grounds for imposing the gaol penalty in road transport on parties other than drivers because truck drivers who commit negligent acts resulting in death are regularly subjected to gaol penalties (a scenario which is extremely rare in other industries). This issue has been addressed under OHS and associated legislation but remains conspicuously absent from the chain of responsibility model of road transport legislation

The NSW Road Transport Association (written submission, page 16) supported 'chain of responsibility' but also identified a problem:

The legislation has a limit to its effectiveness, as enforcement will be a problem. It is not good enough to wait until an accident occurs to proceed with investigations to find out who is the cause before action can be taken. A roving inspectorate is necessary provided some basis for an investigation can be programmed.

There is evidence from other jurisdictions that some of the problems identified can be overcome and successful chain of responsibility prosecutions launched. In August 1999 Queensland Parliament made changes via the Road Transport Reform Act to facilitate prosecution of third parties. According to Queensland Transport (written submission, page 3) section 57B of the Transport Operations (Road Use Management) Act 1995 'was clarified to more accurately define an extended liability offence and an influencing person'. The effectiveness of these changes was demonstrated in May 2000 when a heavy haulage company based on Stradbroke Island became the first company to be convicted under chain of responsibility legislation. The company pleaded guilty to a number of mass offence breaches

(with extended liability being based on a series of driver prosecutions in the previous year) and suffered fines and damages exceeding $35,000. The submission of Queensland Transport noted it was currently investigating a number of other possible breaches by third parties, including consignors, producers, wholesalers and operators, in relation to mass, fatigue and vehicle safety.

The Stradbroke prosecution was referred to by a number of parties to the inquiry as evidence that chain of responsibility can work. The prosecution is certainly significant in the sense that a conviction was achieved (even if the operator pleaded guilty), the publicity it achieved in the industry, and the fact that the fine imposed was of a far higher order than those normally pertaining under road transport legislation. That Queensland Transport is actively pursuing possible prosecutions against parties further up the chain than operators (such as consignors and producers) is also especially noteworthy. In short, these are positive signs.

At the same time, these developments need to be placed in perspective. The evidence is still too limited (in terms of the number of successful prosecutions) to announce a sea change in enforcement has yet occurred. Given the findings of this Inquiry in terms of the role of commercial practices, successful prosecution of parties beyond operators is essential if a deterrent message is to be transmitted. For its part, the Victorian Road Transport Association (written submission) pointed out that while unrealistic time slots were a pressing safety issue no direct action had been taken to address this under chain of responsibility legislation. It seems that no jurisdiction has systematic procedures for investigating the antecedent causes of on-road incidents (raised by WorkCover NSW) or systems enforcement (raised by the NSW Road Transport Association) or even that existing chain provisions would cover more than a fraction of the offences that might be discovered. The evidentiary problems raised by the RTA are serious ones that are yet to be demonstrably overcome (this relates back to the need for more effective documentation discussed elsewhere in this Report).

It is worth noting in passing that this legislation has been long overdue and still lags behind OHS and environmental protection law where Stradbroke-type convictions would be regarded as unexceptional and where available and actually imposed penalties are far higher (much higher fines and the possibility of gaol). Under these laws there is already a long-established record of higher chain prosecutions. The shift away from a pure reliance on prescriptive regulations to those entailing general duties covering a wide range of parties took some time to achieve (perhaps a decade) as it involved re-educating inspectors, prosecutors and others. In its written and oral submissions WorkCover NSW highlighted the need for education, both within the agency, but also the behaviour of parties to the supply chain by a combination of prosecutions and education/promotion programs (written submission, pages 18 and 32). It pointed to its considerable experience in investigating 'up-the-chain' offences, which could be of substantial benefit in terms of implementing the new chain or responsibility provisions in road transport legislation.

In the course of this Inquiry many operators demonstrated at best a very limited understanding of chain of responsibility. This didn't simply apply to small operators, although it is true to say that as a general rule large operators were far more aware of the legislation and small operators, on the other hand, usually had little understanding. The Inquiry heard evidence that even where large companies ran programs to inform managers and others of chain of responsibility requirements this did not extend to their subcontractors (one manager simply stated it was 'not a priority'). This can be contrasted with the Western Australian experience with fatigue management requirements based in OHS legislation where the extension to subcontractors was a major benefit (see below). Given the widespread use of subcontractors and the fact that small fleets directly compete with large fleets it is not reassuring that a process of legislative enactment begun over two years ago appears to have had such a limited recognition. While large fleets may have logistical advantages in tendering they may also find that additional costs of complying with chain of responsibility are not borne by all operators.

On the positive side, most operators that did have knowledge of chain of responsibility endorsed the concept and its use not only in relation to freight forwarders, clients and consignors but also against operators who flouted the rules. A number made mention of the role of the ATA and state industry associations in promoting the concept. Not surprisingly, outside of Queensland most operators were unaware of any recent prosecutions and some mentioned the importance of this in spreading the message. The overall impression of operator knowledge and attitudes gained by the Inquiry was a mixture limited of understanding, cautious support for the principle and 'wait and see' as to what would occur in practice. Given the absence of high profile prosecutions, especially up the chain, such views are hardly surprising, especially in an industry which has been promised more than its share of magic regulatory bullets. Further, some experienced managers of companies who well understood the concept felt the rhetoric was yet to be matched by any serious efforts to address those higher up the chain, with one (oral submission, manager of a large transport company) observing:

The chain of responsibility, recent changes to rope in managers and freight forwarders in setting times for deliveries and the like is a welcome step but its not enough in my observation. If you look at the chain of responsibility from consignor to consignee for very many years now the operators, whether they be company drivers or owner operators working as subcontractors, they've really carried that responsibility in terms of delivery times with very little assistance from the customer, regularly thwarted by delays on arrival despite some so-called clever systems of booking delivery times and the like. All those delays still occur and the only person that has up to now carried responsibility has been the forwarder, that being the transport company, and their driver or subcontractor. I'm sure there have been some welcome steps but they really don't go far enough at this stage to make a difference… I am not sure how you put regulation in place but there needs to be an understanding that a realistic passage of time be allowed for a movement of freight from point A to point B and that by a form of enforcement you can sheet home the responsibility for non compliance to all the parties involved not simply the transport operator.

It might be argued that chain of responsibility has already addressed this. However, the simple fact is – as this manager well knew (and it remained the case at the time of writing this Report) - there was not one successful prosecution against any party beyond the operator, let alone a pattern of prosecutions that might achieve a shift in customer behaviour.

It seems safe to presume that, with some exceptions like the ARA and BHP Logistics, there is even less awareness of chain of responsibility amongst transport customers. Certainly this is the view of operators, the TWU and CFAT, who indicated that, with rare exceptions, they had not detected any change of attitude amongst the customers. Barry Moore from the NRTC (oral submission) argued that customer recognition of their responsibilities was still exceptional and confined to a few large companies. At the same time, companies including a national grain receiver were contacting the Commission asking for information on chain of responsibility because they were re-negotiating contracts with transport operators and wanted to build the provisions into new contracts. He suggested that, even if successful, this would entail far less than 1% of the industry but the direction of change was important.

At the same time, the success of chain of responsibility depends to some degree on its capacity encourage more organised relationships in the transport supply chain. Yet as this Inquiry has already noted, despite some measures to the contrary the overall trend revealed in both submissions and survey evidence available to the NRTC indicate a growing use of subcontracting. This entails an inherently more disorganised situation that increases the number of players and steps in the chain. The argument of the NRTC (oral submission, Kirsty McIntyre, NRTC) is that the chain of responsibility model used does not rely on identifying particular parties performing specific roles but this has been taken into account. Instead, the

chain model used focuses on elements in the transport chain, such as freight loading, and any party that participates in those activities resulting in a road transport breach can be held absolutely liable, irrespective of their formal title and responsibility. Accepting this, the question of precisely who will be targeted (and like OHS legislation this is not limited to one party to any given breach) and the resulting outcomes including deterrence effects remain unclear. At the time of writing this Report, there were simply insufficient prosecutions (one conviction and that a case against an operator who pleaded guilty) to judge whether the NRTC approach can actually overcome these problems. Further, as with other road transport legislation aiming to move up the chain, there are evidentiary issues that the NRTC is seeking to address (in terms of intrusive powers requiring the production of documents identifying consignors etc). The NRTC observed that significant powers to secure documents etc that were taken for granted under OHS and tax legislation represented a major change for transport legislation. The Inquiry accepts this point though is compelled to wonder why this situation was not addressed years ago. Further it yet it to be seen whether the new methods will work as intended. For example, there is the issue of whether the documentary evidence available will lead to action against the appropriate party. More than once the Inquiry was told of instances where clients verbally instructed transport companies to remove documentary evidence of offences (as in the case where a transport company was told to tell its drivers not to fill in the actual hours worked in their time sheets/logbooks). In these cases the remaining evidence will tend to implicate the operator and drivers, neither of who may be prepared to give evidence for fear of losing future work or because they believe chance of conviction is simply too small. It might be noted in passing that a trip-based safety document prepared by the key parties rather than the driver (as is the case with logbooks) discussed elsewhere in this Report would almost certainly enhance the evidentiary base for prosecutions under chain of responsibility.

By way of contrast with the issues just raised in relation to chain of responsibility, there is a well-established pattern of successful prosecutions of offences involving subcontract and labour leasing arrangements under OHS legislation. In Australia, as in a number of other jurisdictions, while OHS agencies have sometimes prosecuted several parties to the offence their prime target is usually the principal contractor. This approach reflects not only the clear intent duty provisions in the legislation but also has strategic value because it targets the party with most control over work arrangements and thereby maximises the deterrent effect. Whether a similar approach will or even can be taken under chain of responsibility legislation is yet to be demonstrated. What can be said is that the re-orientation of road transport legislation would, in the view of this Inquiry, have been accelerated had the NRTC more directly drawn from the experience of and models provided by OHS and environmental legislation. A review of court cases involving subcontracting/leasing arrangements would, in the view of this Inquiry, have proved highly instructive.

The penalties available under chain of responsibility represent a substantial increase over those previously available under road transport legislation, with a progressive ‘ratcheting up’ as new elements of the chain package are introduced (such as those relating to mass offences). They also include cumulative penalties for systematic or persistent offences (another innovation in this area). Nonetheless, existing chain of responsibility penalty levels (ie fines) are still well below those found under OHS and environmental protection legislation, despite efforts to bridge the gap. The NRTC highlighted a new package of penalties being developed, including restitution penalties (available to any party suffering loss as a result of the offence) and commercial benefit penalties (up to three times the profit that could have been made from the offence). Another proposed remedy is a supervisory intervention order, which could place onerous performance requirements on the offender. These remedies all look promising but again their use against consignors or load owners as well as their impact or deterrent effect remains a matter of speculation at this stage.

The staged introduction of the chain in relation to specific categories of offences has proved to be a lengthy process that still covers a narrower range of hazardous practices than those that could be addressed under the general duty provisions of OHS legislation.

At the time of writing this Report, chain of responsibility provisions still compare unfavourably to OHS legislation. This view is confirmed by analysis undertaken by Associate Professor Richard Johnstone for the Inquiry. Comparing existing OHS legislation and chain of responsibility provisions in NSW, Johnstone concludes:

The road transport "chain of responsibility" provisions are to be found in the Road Transport (Safety and Traffic Management)(Driver Fatigue) Regulation 1999 (NSW). Inter alia, they impose maximum driving and work hours, and minimum rest times, upon drivers; and provide for offences where "persons", "consignors" and employers engage in specified activities where the person, consignor or employer "knows, or ought to know" that because of the activity a driver would be likely to commit specified offences. These provisions establish narrower duties than those to be found in the general duty provisions in the OHSA (NSW), discussed above... The flexibility and reach of its general duty provisions, and the larger sanctions, of OHSA (NSW) make it, on balance, the best regime to regulate long haul trucking in New South Wales.(Johnstone, in Appendix 2).

Johnstone notes that these advantages would be enhanced if sections 8 and 9 of the Occupational Health and Safety Act, 2000 were amended as suggested above. As already noted, the coverage and penalty regime associated with chain of responsibility is being enhanced over time but at the present rate of development it will take some years to cover all the issues/offences identified in this Report. Even then, the general duty provisions arguably afford more scope and flexibility in dealing with complex and dynamic sets of practices that pose a risk to drivers and the community (OHS legislation incorporates a specific public safety element).

In sum, the development of chain of responsibility legislation in road transport is to be welcomed but, even on the most optimistic interpretation, a lot of catching up remains to be done. Indeed, a minimum realistic time frame for this legislation to have any serious effect is probably not less than five years (even assuming a high rate of successful prosecutions and a substantial escalation of penalties).

Finally, there is a real question as to whether 'chain of responsibility' will, of its own, be sufficient to affect a significant change without other measures to address the problems identified in Section 3. In concluding its submission (page 9) the insurer NTI Ltd was emphatic on this point.

Load owners, freight forwarders, retailers and fleet owners must be brought into the loop and ***must be held accountable.*** *We must strive to rid the industry of the predicament that many owner operators and employed drivers find themselves in where they lie to insurers and road authorities, after an event, under the threat of losing future employment. There must be some form of minimum freight rate, minimum entry-level standard, tougher Chain of Responsibility law and specifics on loading and unloading issues to protect the 'good' operators. Fork-lift truck drivers and freight consignors, for example should not be able to dictate to drivers and then have no liability for their incompetent actions.*

Other bodies supporting the chain or responsibility, and due diligence concept implicit in this, nevertheless advocated that the option of placing greater reliance on OHS legislation be pursued as a means for achieving the same outcome. For example, the NSW Branch of the TWU (written submission, page 21) argued codes of practice and safe work plans based on OHS legislation presented a means of not only imposed far more serious penalties but also of holding clients liable for their actions that compromised safe systems of work.

4.8.4 Technological devices as an aid to enforcement

Effective enforcement in the long distance road transport industry presents regulators with a major challenge. Unlike a factory, warehouse or office trucks constitute a mobile workplace. Given the sheer number of vehicles moving on a wide geographic terrain, and the capacity of drivers to communicate warnings to each other, monitoring and detection of offences is by no means simple.

In terms of improving enforcement a number of parties raised the role that might be played by new technological devices. Some, like the RTA, simply stated that the option of new technologies being used to monitor speed, fatigue etc should be continuously explored while others advocated specific technological devices. Various proposals were made in relation to how technology could be used to increase the chance of detecting and verifying offences as well as creating an audit-trail or method of cross-referencing. This include discussions of the use of global positioning systems to track vehicles, the downloading of information from engine management systems and driver-specific monitoring devices such as smart cards. Most recently there has been discussion of technology for assessing or predicting driver fatigue. This option was not raised by those making submissions to this Inquiry but the use a computer game to enable roadside testing of driver fatigue was recommended by the recent federal Standing Committee on Communications, Transport and Arts (2000) inquiry into fatigue in transportation. The inquiry drew on a NRTC commissioned a report on fatigue detection and prediction technologies (Hartley et al 2000) that have mainly been pioneered in the USA. The Report concluded that these technologies showed promise but given ongoing questions about their validity and use it was inappropriate to mandate them at this time or to see them as a substitute for setting standards in relation to the capabilities of operators. This Inquiry did receive some negative driver feedback in relation to the federal Committee recommendations (a number along the lines that "I'm no bloody good at computer games"), raising questions about the reliability of the measure. It also appears that such a device is entirely driver-focused and, given evidence already presented, the Inquiry has severe reservations about this.

The Queensland Trucking Association urged that more vigorous use be made of technology like Safe-T-Cam and downloading historical information from onboard computers in terms of prosecutions and that any technical/legal problems (such as conformity with the National Measurement Act) be urgently addressed (written submission, Peter Garske, pages 4-5). For its part, NRMA urged a more effective and integrated use of Safe-T-Cam to detect driving hours breaches:

The Safe-T-Cam network has been recently extended and NRMA understands new initiatives are being planned to more effectively use the data from this system in the field. One initiative being trialed is for field staff doing random checks to be able to remotely access current Safe-T-Cam data to cross check against details in a driver's log book. NRMA believes that this would greatly enhance the effectiveness of random field checks and should be brought on line as soon as possible (written submission NRMA).

As noted elsewhere not all those giving evidence to the Inquiry were as convinced of the benefits of Safe-T-Cam. A number of submissions to the Inquiry argued that a limitation with Safe-T-Cam was that the current system identified vehicles not drivers, which made enforcement difficult in some circumstances, and several suggested this could be overcome with the use a driver specific e-tag. Similar suggestions were also made to the recent federal inquiry into managing fatigue in transport (House of Representatives Standing Committee on Communications, Transport and Arts, 2000:79). The use of driver-specific e-tags needs to be approached cautiously lest it simply reinforce the current over-emphasis on enforcement on drivers. Again, such systems are not 'tamper-proof' and there may be superior remedies to the problem of ambiguous driver identity being used by operators to deny responsibility.

The Inquiry has also noted evidence that indicate the capacity and willingness of some operators to disable or 'modify' speed limiters fitted to vehicles. The written submission of the Traffic Services Branch of the NSW Police Service expressed the view that new technology had to be carefully evaluated in terms of its impact on enforcement effects. It also urged that assessment should be done with a degree of scepticism, given the capacity of operators to evade these devices in the past and the use of some forms of technology such as mobile phones and CB radios to avoid interception by police. Queensland Transport made a similar point in relation to driver specific monitoring devices, arguing that they made excellent fleet and driver management tools but would not prove effective as policing instruments because 'there is too much of an incentive to tamper with the equipment and recordings' (written submission, page 13).

The point that technology is hardly an unequivocal benefit needs to be recognized. Some drivers and operators use technology to avoid detection. There are other technological developments that may adversely effect enforcement. A number of submissions to the Inquiry suggested that the growing use of mobile phones (virtually every driver has one) and of electronic communications, including e-commerce, is reducing the amount of paper evidence of a transport contract that may be used in auditing to detect offences.

At present NSW is the only Australian jurisdiction to mandate vehicle-monitoring devices (VMD. Part 9 of the *Road Transport (Road Safety and Traffic Management)(Road Rules) Regulation 1999*) and has done so for over decade. Vehicles required to be fitted with VMDs scheme include prime movers and articulated vehicles with a gross mass of more than 13.9 tonnes; all trucks with a gross mass of more than 13.9 tonnes carrying dangerous goods in sufficient quantity to require the display of dangerous goods signs; and coaches. Exemptions to these requirements were provided to allow for situations where the use of VMDs was not considered necessary for control of driver fatigue and excessive speed. These include vehicles being used within a radius of 80 km from their usual depot (unless carrying dangerous goods); NSW primary producers' vehicles; and vehicles registered under the Federal Interstate Registration Scheme or in other States and Territories. In addition to the above requirements all B-Doubles operating in NSW (ie. including those registered interstate), with the exception of FIRS-registered B-Doubles, are required to have vehicle monitors as a condition of the B-Double notice. Police are empowered to check VMD records at the roadside. RTA Inspectors do not have this power, but they may check them when office audits are undertaken (supplementary information provided by the RTA).

As noted by the RTA, a shortcoming of tachographs is their susceptibility to tampering.

Electronic monitors show promise as a replacement for the mechanical tachographs, but to be of use as an enforcement tool the standard must require them to be as tamper-proof as possible. There is a danger that the more sophisticated technology will only lead to more sophisticated – and more difficult to detect – tampering. GPS tracking systems also have potential to give real-time monitoring of vehicle operations, covering speed, travel time and route compliance (supplementary information supplied by the RTA).

The use of electronic monitors is under consideration in the UK. In the USA too, the use of electronic monitoring devices is under consideration and there has been at least one trial of GPS-based truck movement monitoring. Under the Motor Carrier Safety Act of 1999 (referred to the Senate) section 220 deals with recording devices with a Congressional findings that:

…the use of electronic control modules in commercial motor vehicles may prove useful to law enforcement officials investigating crashes on the Nation's highways and roads and may prevent the future loss of life.

The history of the introduction of VMDs in NSW and its failure to be adopted Australia-wide is worth recounting. Recommendations to introduce tachographs can be traced back as far as 1980 (if not before) when the NSW Road Freight Industry Inquiry (McDonnell, 1980) urged that they be considered. Four years later the National Road Freight Industry Inquiry (May et al, 1984) recommended tachographs for most articulated trucks. However, neither proposal was acted on although in 1986 the European Economic Community (now EU) required the installation of equipment recording distance travelled, speed and time on heavy commercial freight trucks. In July 1989 the then NSW Minister for Transport, Bruce Baird, sought Cabinet approval for tough measures, including 'likely mandatory installation of tachographs' to deal with the escalating road toll involving heavy vehicles (*Sydney Morning Herald* 8 July 1989 cited in written submission, Philip Laird). This was strongly opposed by the road transport industry, which urged that only limiters be used (a move supported by the then federal Minister for Transport, Bob Brown according). Cabinet subsequently deferred the decision on tachographs despite it having support of the Minister for Transport, RTA, NSW Police, NRMA and the NSW Parliamentary Road Safety Committee, STAYSAFE). The role of industry in lobbying to achieve this outcome was widely reported in the media (*Illawarra Mercury* 26 September 1989, *Sydney Morning Herald* 27 September 1989 and *Daily Telegraph* 30 September 1989 cited in written submission, Philip Laird). The disastrous crash at Cowper (where 20 died and described elsewhere) less than a month later altered the situation. Mandatory fitting of VMDs was introduced as part of a heavy vehicle safety regulatory package the government introduced in response to the incident and the public outcry that surrounded it. The Government's objective was to strongly encourage industry to self-enforce through operators monitoring their own tachograph records.

According to the RTA, other jurisdictions have expressed opposition to the mandatory fitting of VMDs in NRTC-led discussions on national consistency (ie, they voted against VMDs as part of national standards for heavy vehicles). The RTA has been assisting the NRTC to develop a national standard for driver-specific monitoring devices (DSMDs) and an NRTC-sponsored trial of this technology is under-way in South Australia. The national 'driving hours' law (and hence the NSW law) provides for the use of approved DSMDs as alternatives to log books.

A less controversial use of technology to aid compliance has been the development of web sites, such as that operated by Western Australian Main Roads where transport operators to access information (on road conditions etc) and apply for permits for vehicle combinations to operate on the road network. Consideration is being given to extending this to compliance information (in the USA employers can access statistical information on infringements by industry sector and sub-sector from the OSHA web page), providing weight advice and using GPS and mobile phone technology for route and mass compliance instead of paper permits. While this approach may present problems for smaller operators (though most have a mobile phone if not computer internet-access), the provision of information via the internet has considerable potential with regard to providing accessible and traceable set of documents.

4.9 Summary and Conclusions

In assessing the efficacy of existing enforcement measures a number of points stand out.

- Existing enforcement practices have failed to stem a serious level of flouting of regulatory standards in relation to driving hours, speeding, drug use and a range of other areas. The problem of systemic breaches of road safety and other laws is not confined to NSW nor to Australia. It has been identified as a serious problem be recent inquiries in New Zealand (1996) and the United Kingdom (2000) if not elsewhere. Although inadequate resourcing and co-ordination of enforcement agencies (discussed in a later section) play a part in this it is also clear, from both the Australian and overseas evidence) that a primary factor here

is the commercial advantage that can be derived from evading regulatory requirements. The structure of the industry (easy entry, many small/marginal operators etc), commercial factors (poor tendering practices and the market power of some clients) and the removal of regulatory/institutional constraints on competition have created an intensely industry where advantage or survival can be enhanced by breaking the law.

- With several partial exceptions, existing enforcement practices are not informed by an understanding of the underlying reasons for breaches. A point connected to this is that the evidence on enforcement practices presented in this section and in earlier sections of the report repeatedly highlighted the sheer array of both simple and ingenious practice by which some operators sought to evade or defeat compliance tools. It is not unfair to depict some elements of the industry as having engaged in a virtual war with regulators over many years and to have enjoyed a measure of 'success' in this. In all the other industries that the Chair of this Inquiry is familiar with in well over 20 years of involvement in OHS he has never seen such a consistent and widespread pattern of calculated evasion. Such a pattern is not consistent with the notion of a few 'cowboys' or aberrant driver behaviour. The only logical explanation for this is that characteristics of the industry and pressures on it that provide an ongoing powerful incentive for such practices amongst, at the very least, a substantial minority of operators. Submissions from a number of key parties such as the ATA, NRTC and Queensland Transport repeatedly emphasised the need for a 'culture shift' in the industry. In its submission (page 24), Queensland Transport argued that even with increased government and industry attention to fatigue, 'cultural change' would only occur when consignors showed preference to fatigue management accredited transporters, firms investing resources in flexibility got more work, and failure to manage fatigue had the same social stigma as drink driving.

- The Inquiry identified a number of deficiencies in relation to enforcement practices directed at driving hours, speeding and drug use. At one level the Inquiry pointed to specific problems such as the less than effective nature of logbooks and serious gaps with regard to federally registered (FIRS) trucks with regard to the three strikes program. In both the cases just mentioned, solutions were suggested by a number of those giving evidence, and the latter case the Inquiry understands the situation is being addressed at the time of writing. With regard to logbooks, the suggestion that it be replaced with a simple trip-based document has considerable merit, especially as it can cover a range of safety issues, including underpayment of drivers, and specific recommendations based on this are made later in the Report. The Inquiry was also repeatedly told by both operators and others (including ex RTA inspectors and trainers) that in order to be effective, inspectors needed to understand the industry, the challenges truck drivers face negotiating some roads (and seeing signage) and the practices (and even tricks) that some drivers/operators are engaged in. Again, the Inquiry sees considerable merit in ensuring inspectors have a working knowledge of the industry.

- At another level the Inquiry was repeatedly told that dealing with driving hours, speeding and drugs in isolation would invariably fail, as these were symptoms of more deep-seated problems - problems identified in the previous Section of this Report. In other words, enforcement regimes needed to directly confront the commercial practices and intense competition that induced dangerous driving regimes etc. To do this it is essential that all responsible parties become a potential target of enforcement. Again, the Inquiry believes a trip-based document created and signed by the responsible parties is a potential solution and one that might mesh with the shift to fatigue management (see next section). Another crucial issue is the question of accrediting operators in order to ensure they meet minimum safety standards. Various means of achieving this are considered in the next section of the Report.

- Another critical point to emerge is that, despite some recent initiatives, the overriding focus of enforcement has been on drivers and, to a far lesser degree, operators. System offences and parties higher up the supply chain remain almost if not entirely exempt from any responsibility for the consequences of their decisions on driver or public safety. Given that power tends to reside at the top of both organisational and inter-organisational supply chains the existing approach makes little sense. Bodies such as the Environmental Protection Authority are only too well aware of the cascading impact on behaviour caused by even a small number of prosecutions targeting decision-makers at the top of the chain.

- This section also identified some critical limitations in enforcement practices arising from a lack of inter-jurisdictional co-ordination and also a failure to get co-ordinated use of an appropriate mix of enforcement measures within NSW itself, including the failure to use OHS legislation. These problems are not unique to NSW or Australia as whole. Writing on the USA (Belzer, 2000:70) observed '…truckdriver safety seems to have fallen between the cracks as critics charge that neither DOT nor OSHA has taken clear responsibility for truckdriver safety and health.' At the same time, as indicated there are clear signs of a concerted effort to resolve this problem in other Australian jurisdictions (most notably in Victoria, Western Australia and the Northern Territory), entailing an increased reliance on OHS legislation. As yet NSW has failed to follow this direction, although the great majority of parties giving evidence to the Inquiry saw this as a positive step. In explaining its position, WorkCover NSW argued it believed the RTA should take the lead role. The Inquiry can appreciate the agency's reluctance not to intrude on another agency's role. However, in its oral and written submissions the RTA made it clear it saw considerable value in a greater input from WorkCover/OHS legislation. Further, the situation here is one of shared responsibilities that neither agency can walk away from. Even if this doesn't mean equal input it does mean joint input and some efforts to co-ordinate this. As this section of the report has made clear, existing enforcement practices using road transport legislation (and including chain of responsibility) are, of themselves, inadequate for the task of achieving a fundamental and significant shift in 'industry culture'. The evidence on this is overwhelming and it is a key reason why OHS agencies in other jurisdictions have begun to take a stronger role.

- WorkCover pointed to a number of problems with regard to specific provisions of the NSW Occupational Health and Safety Act, 2000 that, in its view, made it more difficult for the agency to take on a stronger enforcement role in long haul trucking. The legal advice commissioned for the Inquiry and undertaken by arguably Australia's leading authority on OHS law (author on the standard text on the field) indicates these difficulties are by no means insurmountable. Indeed, he identified only one problem that required amendment of the Occupational Health and Safety Act, 2000 - a simple amendment of two general duty sections that would bring them into line with similar provisions in Victoria and elsewhere. The Inquiry has recommended that these amendments be made as a matter of urgency. Though outside the terms of reference of the Inquiry, it can be noted in passing that this change would assist WorkCover to address a number of work arrangements outside long haul trucking that have become increasingly problematic.

- If stronger use is to be made of OHS legislation in long haul trucking then there are issues of co-ordination and resourcing. The evidence of other jurisdictions indicates that a good working relationship between the Police, OHS and Road Transport Agencies can be achieved. The issue of resourcing a stronger input with regard to OHS legislation needs to be given serious consideration. The Inquiry makes specific recommendations aimed to address both issues.

- The Inquiry heard repeated claims that drivers were not only reluctant to give evidence of illegal practices to enforcement authorities for fear of risking their future employment

prospects but the same fear made drivers reluctant to make complaints about excessive driving hours, defective trucks and a range of other issues. This evidence was not only repeated it came from a range of parties not simply drivers themselves and union officials. The Inquiry feels this evidence is sufficient to indicate there is a serious problem of drivers not being able to report safety issues which should be addressed.

SECTION 5

CURRENT FORMS OF REGULATION IN THE LONG DISTANCE ROAD TRANSPORT INDUSTRY AND WHICH MODEL IS MOST APPROPRIATE

Another key term of reference for the Inquiry was to examine current forms of regulation in the industry, to assess whether a self-regulation or external regulation model is most appropriate for the road transport industry and what forms this should take.

In the last section the main features of road transport and OHS legislation used to regulate the long haul trucking industry were identified and discussed as part of the examination of enforcement practices. As such, it would serve no purpose to repeat this discussion here and attention will focus on alternative methods of regulation that have been proposed or implemented in recent years. The debate about how best to regulate the long distance road transport industry has been a long running one, including the issue of the degree of reliance that should be placed on self-regulation. Self-regulation has always subject to ambiguity in terms of its precise meaning. For example, some have interpreted the move from specification standards to performance standards and general duties in OHS legislation as a move to self-regulation. This view was vehemently disputed by WorkCover in it submission on the sound basis that the change in regulatory instruments does not affect the mandatory nature of the standards that need to be met. Equally, the introduction of internal regulatory systems by employers in order to meet these standards does not amount to self-regulation (though some transport operators interpreted it in this fashion). Disturbing occurrences such as the Longford incident in Victoria (see Hopkins, 1999), highlight the critical need for vigorous external vetting of such systems.

Amidst all this confusion what can be said is that self-regulation became something of a popular catch-cry amongst policy-makers in the 1980s but by the late 1990s evidence attesting to its effectiveness was hard to find, causing a re-think in some policy circles, as well as criticism in recent inquiries. For example, a critical finding of the report of the Queensland Building and Construction Industry Taskforce released in August 2000 was that self-regulation had 'gone too far and at times been used to provide employers with unnecessary and confusing discretion' (*SafetyZone*, November/December 2000:5). The report called for a clearer definition of the rights and obligations of employers and workers, mandatory induction of industry participants and requiring principal contractors and employers to prepare work plans and method statements. These findings are worth noting given a number of similarities that building and construction shares with road transport, including a small number of large operators and a very large number of small operators, extensive use of subcontracting and intense competition for work. The extent to which self-regulation, or more restricted notions of voluntary compliance, could play a significant role in any particular industry is likely to be influenced by industry structure, including firm size (as a general rule, smaller firms have less ability to introduce internal responsibility systems). We will return to these issues shortly.

In the long haul road transport industry self-regulation in the sense of the industry being made entirely responsible for regulating itself, was not considered a serious option by any other parties interviewed in the course of the Inquiry. Rather, self-regulation was conceived as individual operators and the industry taking on more responsibility through voluntary OHS management/accreditation schemes, voluntary alternative compliance programs (especially in the area of truck maintenance and fatigue management) or the use of voluntary codes of practice or conduct. The first two categories overlap because the voluntary OHS management/accreditation schemes can involve altered compliance arrangements by regulators and, on the other hand, industry has played a strong role in alternative compliance

regimes. Their advocates see the use of these schemes as a critical adjunct to external regulation, one that helps free up resources to target more recalcitrant elements in the industry.

5.1 Current Examples of Internal/Self-Regulation

At the present time a number of schemes operate in the road transport industry whereby individual operators can gain recognition or exemption from some compliance requirements by demonstrate they have achieved performance standards to the regulatory authority or an industry-based accreditation body. Those schemes directly administered by government agencies include what are termed Alternative Compliance Programs such as the Fatigue Management Program, discussed earlier, which permits a more flexible fatigue management regime than would be allowed under prescriptive hours regulations. Industry-based schemes include the national scheme, TruckSafe, and a more recent Victorian-based scheme TransCare. These industry systems will be described and assessed in turn.

5.1.1 Industry-based Initiatives

There are a number of existing accreditation schemes in place in the industry. Indeed, there is no shortage of accreditation and certification schemes, with one industry analyst (Hassle, 1997:25) referring to a proliferation of schemes in 1997 - and the number has increased further since this time. Apart from various codes of practice the following schemes are presently of offer include:

1. Trucksafe (Proprietal Scheme)
2. TruckCare (Public Domain Scheme)
3. TransCare (Public Domain Scheme)
4. HACCP (Public Domain Scheme)
5. PACIA (Proprietal Scheme)
6. National Heavy Vehicle Accreditation Scheme (or NHVAS, Public Domain Scheme)
7. Transitional Fatigue Management (Public Domain Scheme)
8. ISO 9002 Standards Australia Transport Guidelines (Public Domain Scheme)

It is beyond the scope of this Inquiry to examine all these schemes in detail. Rather, attention will focus on TruckSafe, which is arguably the most important and received considerable attention from submissions made to the Inquiry. Some attention will also be given TransCare, a recent scheme developed in Victoria, to provide some basis for comparison and to indicate the broader sweep of developments in the voluntary accreditation area.

5.1.1.1 *TruckSafe*

TruckSafe was an industry-based accreditation scheme developed by the ATA in the 1990s with the avowed purpose of changing the dominant safety culture in the industry and responding disastrous incidents in the late 1980s. During the early 1990s a set of modules were developed addressing four elements namely, driver health and safety (a new focus for the industry), vehicle maintenance, driver training and management. The modules were developed on the basis of driver research by the ATA research/courses on fatigue undertaken by Dr Anne Marie Feyer and Dr Ann Williamson from NOHSC and the NRTC working group on fatigue management). The modules formed the basis for an industry-accreditation

scheme that was piloted amongst a group of 29 operators selected to represent a cross-section of the industry in terms of size, location, type of freight etc. Following some modification, 200 operators from across the country were approached to become the first accredited operators. Each prospective accredited operator was audited by an independent and external third party auditor and then reviewed by an Accreditation Council by Professor Michael Coper, Dean of Law at the Australian National University and a member of the National Driving Hours Group established by the Australian Road Transport Advocacy Committee.

The Team 200 model became the basis for TruckSafe, with additional standards on OHS, driving hours and fatigue management being recently added and further developments on the Environment, Workshop Suppliers, Fatigue and Load Restraint currently underway (written submission, ATA page 22). As at December 1999 there were four core accreditation standards in TruckSafe, namely maintenance management, workplace and driver health, management and training. In its submission the ATA stated that 350 companies had achieved TruckSafe accreditation with another 380 currently in the process of accreditation. According to the ATA owner/drivers account for 69% of the 'make-up' of TruckSafe (reflecting the overall character of the industry) though evidence presented to the Inquiry gave the clear impression that fleet members accounted for the bulk of the trucks. Thus far, TruckSafe has conducted medicals and training on more than 13,000 drivers and those companies participating (accredited or seeking accreditation) represent about 10% of the long distance trucking fleet (oral submission, Mile Edmonds, ATA). According to ATA:

These operators have been proven through statistics…to be actually a better risk and yet they still continue to fight for recognition with the regulatory authorities and customers (oral submission, Mike Edmonds, ATA).

TruckSafe represents the first major effort by the industry to lift safety performance through its own initiative. As such, the ATA strongly argued that TruckSafe represented a way forward for the industry, pointing to its close involvement in Fatigue Management Program pilot in Queensland as well as an entire supply chain fatigue management program with a large company (see below). The ATA also emphasised the value of its memorandum of understanding with the RTA – a measure it would like to extend to other jurisdictions – which entailed the exchange of information (including regulatory performance of TruckSafe accredited operators to, amongst other things, assist TruckSafe's independent review panel)

Jan Pattison, the wife/partner of an owner/driver based in southern Queensland, strongly endorsed the positive role that TruckSafe had played in improving the efficiency and safety of their operation. Mrs Pattison was an impressive witness, who provided the Inquiry with detailed records to substantiate the points she raised. She noted (oral submission) that enhancing safety performance required a commitment in terms of time and cost. In addition to the joining cost, Mrs Pattison gave the example of the requirement for at least 16 hours of training each year. As part of this, she and her husband had agreed that he should undergo driver training every two years. Completing a three day multi-combination skills course at the Mount Cotton driver training centre in Queensland had cost $1,000 and resulted in six days of lost earning time for their only truck. Further, a TruckSafe audit would cost an owner/operator $600. Mrs Pattison regarded these costs as more than justified (some of these costs are claimable as a business expenses but the cash flow burden on small operators should not be under-estimated). She believed that, given the economic pressures on owner/drivers, the entry cost alone helped to explain why more owner/drivers had not joined TruckSafe:

A question that often gets asked to me is why aren't there more owner/drivers doing TruckSafe? Why aren't there more owner/drivers doing fatigue management? I sort of say to them, well its going to cost them $2,500 to do TruckSafe and they look at that thinking well that's a long term thing but I need two new steer tyres…Going back .to rates its very, very hard at the moment.

The ATA (oral submission, Mike Edmonds) supported the idea of a government subsidy to assist owner/drivers enter accreditation schemes like TruckSafe. Such an approach, which avoids many of the problems of incentive schemes discussed below, and is consistent with strong case made by the ATA for more training expenditure in the industry, warrants further investigation.

A number of those endorsing TruckSafe did so with some qualification. For example, Dean Croke from the insurer MMI/Allianz Australia argued that was best initiative the industry had come up with and despite its small membership level had helped many operators to improve their business practices and long-term viability. At the same time, he observed:

However, TruckSafe operators still have truck crashes as the TruckSafe audit process does not audit many aspects of road transport law including driving hours, driver schedules speed and vehicle compliance. It simply asks operator to agree to implement a set of industry standards and be audited against them.

As TruckSafe does not specifically address the major causal factors of heavy vehicle accidents, it will not have the desired impact on driver fatigue levels until the standards are widened to include those included in the Queensland Transport Fatigue Management Program (FMP) (written submission, Dean Croke/MMI page 15).

The Insurance Council of Australia (written submission, Dallas Booth, page 11) made similar points. The Council argued that while TruckSafe was a step in the right direction it had achieved only a low market penetration; it failed to address key areas like unrealistic trip schedules, speeding, fatigue and drug use; and it needed more rigorous independent evaluation to achieve credibility. Consistent with this, the Inquiry received more than a few submissions from drivers and operators questioning whether TruckSafe accredited operators were more safety compliant in relation to issues such as speeding:

I was travelling at 102 kilometres per hour…I got passed by, and I'll say it, a TruckSafe accredited company… You can buy a program for $800 to put on your computer and as long as you keep up the paperwork and the entries in the computer system, when the auditors come in to audit you for TruckSafe, as long as every thing is right on the computer you're right. However this squeaky clean TruckSafe accredited person runs overnight express [describes colour and logo of company trucks] but I tell you tonight, 130 kilometres an hour he passed me…I wondered with Safe-T-Cam. I thought how's he going to do it…When you come round to Bell's Road and …you're coming into Albury I noticed a big line of trucks… tailgating [running tail to nose to avoid the hide the number plate from the Safe-T-Cam]… That's okay for Sesame St (truck driver expression for Hume Highway, oral submission, Victorian owner/driver).

While this driver's reference to a large number of trucks tailgating was exceptional, references to the involvement of TruckSafe accredited vehicles in speeding and other offences was not. TruckSafe has undoubtedly aroused a certain amount of resentment amongst non-TruckSafe operators and drivers so these criticisms need to be treated with some caution. Claims that TruckSafe operators were no more compliant with on-road laws than other operators also emanated from a number of enforcement officers (police and RTA inspectors) making submissions to the Inquiry. For its part, the RTA (oral submission) expressed some confidence in TruckSafe, pointing to a regular exchange of information (such as RTA data on offences relating to speeding, defects etc) and the actions of a TruckSafe independent review panel that followed up these complaints. The RTA pointed to the recent suspension of one operator's accreditation and also moves to introduce more independent auditing following criticism of this (see below). The RTA was unaware of a number of the criticisms of

TruckSafe (such as manipulation of audit practices) but noted it retained the right to withdraw the benefits of any TruckSafe operator they were not satisfied with.

The Inquiry is unaware of any exhaustive independent audit of TruckSafe compliance with road transport laws by regulatory agencies. It may be that, like any voluntary scheme, a small but conspicuous number of operators have flouted the spirit of the scheme (if not the letter given that TruckSafe does not address scheduling, speeding etc). It is unknown whether operators have been stripped of their accreditation on this basis. The Inquiry has no information on the number of operators stripped of accreditation and the basis for this. At the same time, publicised stripping of accreditation might well serve to strengthen the legitimacy/credibility of the scheme in the eyes of other operators.

Qualitative research of trucking operators by another insurance company made available to this Inquiry indicated that TruckSafe had widespread recognition and was seen as being able to improve the industry's image. At the same time, operators perceived that TruckSafe membership was too expensive, provided few of the expected benefits (in terms of discounted insurance premiums, access to work and fewer RTA inspections) and gaining accreditation was too easy.

A number of submissions were critical of TruckSafe. The NSW Branch of the Transport Workers' Union (written submission, at page 18), for example, argued that TruckSafe had similar limitations to previous efforts to improve standards in the industry, namely the problems of ownership/credibility and enforcement:

First, it is run, regulated, audited and initiated from within the industry… Secondly, the program is unenforceable. There is no penalty for non-compliance or failure to meet the audit process other than, perhaps, the withdrawal of accreditation. This, however, is unlikely as anecdotal evidence provided to the union suggest the majority if not all of the current TruckSafe members are responsible for regular breaches of existing driving hours and minimum safety standards.

Other individuals and organisations making submissions to the Inquiry echoed a number of these criticisms though often in a less strident fashion. One recurring area of criticism related to the auditing system. Suggestions were made that the audit was largely 'paper-based' rather than involving actual inspection of vehicles etc to check the veracity of paper-records. The danger of 'paper compliance' has been identified as a potentially significant problem with any OHS management system and, as such, requires special measures including independent vetting (by unions or other independent bodies). The paper 'compliance' criticism was not confined to TruckSafe but was made in relation to a number of the voluntary schemes/alternative compliance programs. In relation to TruckSafe there were allegations that at least some auditors lacked the technical knowledge to inspect trucks and trailers, that inspection of heavy vehicles in the yard was rare, and attempts to see if defective vehicles had been parked around the corner even rarer. There were even suggestions that the auditing process had been manipulated. A former fleet maintenance manager for a large road transport company told the Inquiry that the company had been able to delay an audit at what would have proved an inauspicious time by contacting TruckSafe to say it was unhappy with the designated auditor (company's have this right). RTA stressed it saw the need for a combined package of compliance measures, including alternative compliance, rather than reliance on one or two measures.

Another criticism levelled by some insurers was that TruckSafe accredited operators had claim records no better than other operators. However, this claim was disputed by the largest insurer of TruckSafe firms which argued that loss ratios for TruckSafe firms was consistently 8 to 10% better than other operators in the period 1998 to 2000 (written submission, heavy vehicle insurer). This firm argued TruckSafe might be used as the benchmark for a minimum

standard of entry into the industry or the basis for industry licensing criteria. For their part, a number of TruckSafe operators spoken to by the Inquiry complained that they were disappointed that there wasn't a reward, in terms of lower insurance premiums, for the efforts they were putting in. Some indicated accreditation, had for them, largely entailed documenting and producing manuals on things they were already doing but believed it had undoubtedly led significant benefits for others. A number of TruckSafe operators were perplexed by the lack of publicity or information given with regard to operators stripped of their TruckSafe accreditation.

An important limitation with TruckSafe, and one it shares with almost all other voluntary schemes, is that it is largely concerned with dealing with the symptoms of safety problems in the long haul trucking industry not the underlying causes. While the ATA has commendably sought to address poor business skills amongst operators it remains the fact that membership of TruckSafe is too small and largely confined to larger companies (not small operators most need of this help). More importantly, like other voluntary schemes TruckSafe does not address the commercial practices including the role of customers that this Inquiry has found to be a critical cause of unsafe practices in the industry. This problem has been recognised by some companies, with one (a TruckSafe member) recommending, as part of its written submission, that TruckSafe be expanded to include all customers in the supply chain and thereby serve as a 'best practice' model for the industry. This suggestion has some merit although it still does not address the membership coverage problem. Nor does it provide a proactive solution to the easy entry into the industry of under-prepared, highly indebted and accordingly vulnerable new operators, recycling problems that longer-term operators have overcome (with others having already succumbed) and exacerbating the competitive pressures within the industry. The ATA is aware of business skills/ease of entry issue and has undertaken some efforts to promote better knowledge on these areas. At the same time, it would appear that it is small operators, especially owner/drivers, who have most problems in this area that are least likely to join TruckSafe (even though, according to the ATA, current membership is representative of the industry as a whole). It also needs to be remembered that the current TruckSafe membership (around 350) is a tiny fraction of the over 30,000 for-hire freight operators in Australia and while the scheme has tended to attract larger companies there are major operators outside the system. In other words, TruckSafe retains only a small fraction of transport operators and long haul distance trucks.

In sum, the Inquiry received a wide range of viewpoints on TruckSafe. On the one hand, TruckSafe has by far the highest recognition of all the voluntary accreditation schemes currently on offer and is seen as having value, or potential value, by a number of knowledgeable parties outside the industry. On the other hand, membership remains small despite nearly a decade of operation, its effectiveness is questioned by at least some insurers (if the not the largest with presumably the best data set), and the scheme needs to achieve greater credibility in terms of its ownership and auditing processes.

5.1.1.2 *TransCare*

TransCare is an OHS management self-audit, performance-based OHS management and (potential) accreditation scheme recently developed by the Victorian Road Transport Association. Victorian Workcover has funded a pilot of the scheme including about 20 companies. Its originators told the Inquiry that the scheme has support of the Transport Workers Union. TransCare entails a detailed assessment checklist covering areas such as communication/information and consultation, accountability, training, site safety, equipment/maintenance, hazards, dangerous goods, accident investigation, purchasing, human resource management and driver policies, legal responsibilities, injury management and rehabilitation and internal review. Key issues such as drug use and shifts are addressed though not in great detail. Unlike the present version of TruckSafe, TransCare includes a detailed section of subcontractor management and, commendably, the issue is also integrated into

other sections (with for example, questions on subcontractor training in the section on training). At the same time, TransCare benchmarks draw on TruckSafe, ISO 9000 and InjuryMAP as well as OHS and other legislation requirements.

Overall, TransCare covers a relatively wide range of issues and is in many respects comparable to OHS management/self-audit systems that are now common in other industries but up until recently have been comparatively rare in road transport. The system is based on a computer software package (using CD-ROM) that enables a degree of flexibility not found in paper systems (but avoiding many of the narrow presumptions that mar many computer-based OHS programs marketed in the USA and to a lesser extent here). The package is designed for the specific needs of transport operators and has an array of back-up information so it can be adapted focus on a particular segment of the industry (eg livestock transport). In sum, TransCare appears to be useful package and early responses have been promising though as with other voluntary schemes proving effectiveness over a long period and with a large member base will be critical. It needs to be remembered that given its recent development TransCare has not attracted the critical scrutiny that is the case with TruckSafe.

Like TruckSafe and other voluntary schemes a key question is how to induce a large number of transport companies to 'join up'. Unlike TruckSafe, TransCare is not a proprietal scheme that must be purchased but will be available to the industry at not cost. While this removes a barrier to take-up there is still the question of how to induce many operators to take up the scheme. The developers of TransCare hope that this may be achieved through the incentive of reduced workers' compensation premiums and insurance for asset liability for TransCare members. The same suggestion has been made with regard to Trucksafe but as noted below, some insurers at least are not keen about this approach and there are also likely to be practical limits to the degree such incentives can attract operators to enter the scheme. This is not to say that developments like TransCare are not a positive sign – they are.

The Inquiry was impressed by the broad scope of TransCare. In its structure and format, TransCare appears much closer to the better and comprehensive OHS management systems being developed in other industries and as such can be seen as an attempt to bring the trucking industry more into line with the sorts of standards in OHS management expected elsewhere. Practical and relatively comprehensive voluntary schemes have a role to play in the road freight industry but the evidence presented to this Inquiry indicates that while they improve the performance of some operators they are unlikely to lift operator standards generally. In any case it is by no means clear that, unlike TruckSafe, TransCare is being proposed as an alternative to operator licensing since the Victorian Road Transport Association, unlike the ATA, supports operator licensing (and more stringent driver licensing – see below). Rather, it may be seen as a useful voluntary overlay to the mandatory standards under operator licensing, helping operators to move to a superior level of safety performance. If such schemes are seen to build on the standards laid down in operator licensing this Inquiry believes they are likely prove more attractive to trucking operators than the current situation where all accreditation is voluntary. This is because operator licensing will send a clear message to all operators that they will need to 'lift their game' and if consignors and others are included in licensing the message will be reinforced, with the latter seeking ways of demonstrating they are meeting their legal obligations.

5.1.1.3 *Using Incentives to Extend Voluntary Accreditation Schemes*

As already implied, a key problem confronting voluntary accreditation/certification schemes is their limited coverage of operators in the industry. According to Hassall, Simpson and Barnesby (2001:6), there has been accelerated growth of road transport accreditation since 1997 largely driven by newer schemes such as Trucksafe, HACCP and NHVS. They have projected an average annual growth of 17.7% to 2002. However, even if such projections are achieved and sustained into the future the overall number of operators covered by voluntary

schemes will still remain small (though it is likely to include almost all large operators). It is also worth noting that Hassall, Simpson and Barnesby (2001:7) make the point that the peak of fatal accidents in the late 1980s and subsequent regulation (including the establishment of the NRTC) was the most significant driver behind the development and growth of accreditation schemes. Of course, a moot point here is not only the critical role of regulation (and threats of more stringent intervention) in sponsoring interest in accreditation but also whether, while accreditation remains voluntary, it will capture the operators most in need of lifting their performance and thereby changing overall behaviour in the industry. Consistent with observations made in the first section of this Report, Hassall, Simpson and Barnesby (2001:7-8) note that the growth of accreditation schemes has had no appreciable effect on the level of fatal and serious truck crashes, which have remained consistent since 1991. In other words, there is no compelling evidence these schemes are contributing to a decline in the level of serious incidents – the very incidents that are of critical concern to this Inquiry. Hassall, Simpson and Barnesby (2001:8-14) go on to discuss the confusing array of voluntary schemes now available, the special needs of owner/drivers (partly addressed by Trucksafe and TransCare) and the role regulators could play in influencing the adoption of these schemes by mandating minimum certification modules and standards.

Unless, the coverage problem can be resolved the various schemes identified will remain at the margins of changing industry practice, which is not to gainsay the benefits of at least some to individual operators. When this issue was raised in connection to these schemes, the most common response of their advocates was to suggest that incentives could be used to boost membership. The first point that needs to be made here is that, as recognised by it advocates, for this to work the commercial advantages accruing to accredited operators must exceed the commercial advantage derived from regulatory evasion. In many respects this appears to be a 'tall ask'. The incentive of increased business at the expense of lower quality operators has, with some exceptions, generally failed to materialise as it appears customers are largely driven by concerns of price. Another option more commonly canvassed was discounts on insurance cover. Responding to the recent escalation in CTP (ie compulsory third party) insurance claims and premiums the ATA suggested that the introduction of performance based-premiums could represent a powerful commercial pressure to lift standards and make accreditation more popular (oral submission, Mike Edmonds, ATA). The Inquiry accepts the point that performance-based CTP premiums could be a powerful tool that might effectively force some operators to improve their performance or leave the industry. At the same time, insurance schemes need to balance incentive and coverage objectives and it is likely in the area of CTP that the relevant government agencies would resist any move that might detract from anything but complete cover of the industry. The ‘churning’ of operators that marks the industry may also mute such market signals since there are always ready replacements for those operators who fail, with many of the new entrants (on the basis of past history) being under-capitalised and desperate to survive.

The most commonly referred to incentive was providing premium discounts to accredited operators in the areas of comprehensive insurance and workers' compensation insurance. Here, it has to be noted that, by and large, insurers were not enthusiastic to the idea. Even some insurers who endorsed accreditation schemes such as TruckSafe expressed reservations.

The committee has heard calls from the ACTU for insurance companies to offer lower premiums as an incentive to transport operators to better manage fatigue. This approach has been tried before without success involving the TruckSafe Program. When it was introduced some insurers believed accredited operators would be better risks and offered immediate reductions without evidence that a change in on-road behaviour had been effected. Allianz have found that TruckSafe operators are no better risk than any other group of operators, some are in fact the highest risk operators in the industry with the worst accident records to date.

Lowering premiums will not work as it just allows operators to get away with high risk behaviour knowing that the insurance company will always be there to pick up the pieces. Unless operators get a clear message that high-risk transport operations where high levels of fatigue are involved attract higher premiums, then the trucking industry will continue believing that high-risk behaviour is acceptable (written submission, Dean Croke, Allianz Australia page 20).

Offering incentives (such as discounts to insurance premiums) could be used to expand the coverage of TruckSafe (or other schemes like TransCare for that matter). However, this seemingly attractive means of using market pressure to lift standards does not, in the view of this Inquiry, represent a solution to the coverage problem for a number of reasons. First, the offering of such incentives was opposed by a number of insurers (including at least one supporter of TruckSafe) as not being justified on the basis performance by TruckSafe accredited firms (the largest insurer disagreed on this score). Second, such incentive schemes are known to be susceptible to manipulation of claims incidence (without any comparable changes in the incidence of claimable incidents). Third, insurance incentives will not influence the large number of predominantly small operators and owner/drivers who are under-insured (even non-insured) or who push the regulatory envelope even though these are precisely the ones who most need to meet accreditation requirements. Fourth, the incentive approach is liable to be defeated in practice by the elaborate subcontracting networks that already exist (by enabling firms to disguise risks/claims through outsourcing). The most direct and arguably effective way to achieve comprehensive and higher levels of performance through accreditation is to make it mandatory.

For a number of quite similar reasons the Inquiry is also doubtful as to whether discounts on workers' compensation premiums will have the desired effect. The Inquiry has already presented evidence on the evasion and manipulation of workers' compensation premiums by some operators, indicate that for them discounts hardly provide a significant incentive. Similarly, the incentive hardly applies to owner/drivers or to firms who use them as subcontractors.

Other incentives raised in the course of the Inquiry included discounts on government charges such as truck registration fees or requirements that freight forwarders should use accredited operators in preference to non-accredited operators. With regard to the former it is by no means clear that the incentive would be sufficient to offset the additional costs entailed in accreditation let alone the commercial advantage of regulatory evasion (although exclusion from the federal diesel grant might prove a more powerful incentive). The latter suggestion may have merit but its effectiveness will depend on just how stringent the efforts to secure an accredited operator have to be in order to satisfy those overseeing the scheme (and it is liable to prove a complex process). In an industry like road transport the bar may well need to be set at the point which nearly excludes unaccredited operators, raising the obvious point as to whether simply mandating this requirement through an operator licensing system might not prove a more direct and effective route. Further, licensing as a proactive form of regulation places the compliance burden far more on the regulated that reactive forms of regulation (to which alternative compliance measures are normally compared).

5.1.2 Initiatives by Individual Companies

During the course of its investigation the Inquiry became aware of a number of generally medium to large operators who had made strenuous efforts to improve safety performance by accepting internal responsibility and adopting measures to implement this. A number of these companies made written or oral submissions to the Inquiry (in some cases both) and the Inquiry also visited a number of transport company premises to examine their fatigue management and other safety management regimes (including the use of global positioning technology). Several of the companies freely acknowledged that prior to recent improvements

the company had a very poor record. The evidence on measures to manage fatigue and safety presented was usually impressive and, in most cases, could be corroborated with other evidence available to the Inquiry. Some of the companies concerned belong to TruckSafe or equivalent schemes while others did not. Nevertheless, it is important to acknowledge that the management of a number of transport companies have been keen to accept internal responsibility, with some using voluntary accreditation schemes to assist with this while others have relied on their own resources.

While the long haul road freight industry usually attracts a very adverse image in media reporting, and this Inquiry has identified many serious problems requiring urgent attention, there are 'good news' stories that also need due recognition. Individual operators, often at considerable cost in terms of time and energy, have made strenuous efforts to improve both the quality of the services they deliver and the safety of their drivers (and other road users). Such operators indicate that an efficient and safe road transport industry is achievable although in the present climate this often comes at a cost of lost customers and competing with less scrupulous operators. Instituting an annual 'best practice' award scheme (with suitable categories based on size and sector) to recognise and reinforce this achievement in the eyes of other operators, as recommended by one operator, has merit.

The Inquiry visited a Sydney-based large transport company (a TruckSafe member) and was able to inspect air-conditioned sleeping quarters and other facilities provided for drivers. As in other cases, the management emphasised that the company had moved from having a poor record some years before, by instituting a number of measures to manage driver fatigue (including changing drivers at Newcastle, trying to ensure drivers got a minimum number of night sleeps at home, and arranging for separate drivers to do local deliveries once a truck reached its destination). The company recognised the importance of work/non-work balances (especially family life) to the health and wellbeing of its drivers. The company also used a sophisticated vehicle tracking/global positioning system (called C-Track) to map fleet movements and reduce pressure on drivers to meet unrealistic/unsafe schedules.

Another large company was the first to employ a full-time Driver Training Officer in NSW (it now had two officers), a practice that has now been followed by most other large operators (though some use outsource this the Mount Cotton Driver Training School in Queensland or DECCA). The company had integrated OHS into its ISO 9002 quality assurance accreditation (and there it is externally audited) – this remains atypical even for larger companies - and was able to achieve lost time injury and labour turnover rates (between 3 and 5% per annum) well below the industry average. The company also engages in very careful pre-employment assessment of potential drivers (including psychological testing to identify risk aversion and compliance behaviour as well as medical testing and ongoing regular assessment after employment [but not drug testing]). This is matched with a extremely rigorous vehicle maintenance regime. The company had spent $2 million dollars putting its program in place and has not joined TruckSafe because it believes it has achieved a standard of performance that goes beyond the current version of TruckSafe. The company has adapted its vehicles (such as the location of mirrors) and training methods in response to evidence from incidents (it also benchmarks its safety performance against other operators). With assistance from the MAA, it has enforced the wearing of seat belts by drivers long before this was mandated by regulation.

The company has a rigid rule in relation to scheduling that it will not schedule a driver where that driver would exceed their available working hours. The General Manager has made it clear that breach of this rule will result in dismissal of the responsible manager prior to dismissal of the driver. Drivers who slightly infringe on schedules have been reprimanded or sent for retraining. Like virtually every other transport company spoken to by the Inquiry, delays in loading and unloading, constituted one of the most serious and uncontrollable threats to its scheduling regime. Unlike many other large companies, this company continues

to make very little use of subcontracted small fleets or owner/drivers. It is worth noting that the one area where the scheduling rule has been breached has been where a subcontractor has worked for the company on day shift and then sought work with another company on night shift. A number of subcontractors were stood down (removed from the company list) or suspended (where the subcontractor could show the practice had undertaken independently of their knowledge) when the company discovered this practice.

These examples provide by no means all the positive cases that were identified in the course of the Inquiry but are indicative of the more progressive approach that marks some elements in the industry.

5.1.3 Alternate Compliance Programs

Alternative Compliance grew out of NRTC led discussions on operator licensing options and self-regulation in 1993. While the NRTC (1993) discussion paper had canvassed operator licensing Hassall (1997:26) reports that regulators (or at least some of them) preferred a move away from conventional enforcement measures such as weighbridges to internal auditing of companies that could assure them of meeting regulatory requirements. This shift also had the support of industry representatives. As the name implies, alternative compliance provided new options in terms of meeting regulatory standards and in at least some cases a reshaping of those standards into a more flexible format (especially those relating to driving hours/fatigue management discussed below). Development of these schemes began in 1994. Examples of alternative compliance schemes include the Fatigue Management Program (examined below) piloted in Queensland and the Mass Management (Loading) controlled by Vicroads.

Another example is the Maintenance Management Scheme (MMS), which forms part of the National Heavy Vehicle Accreditation (NHVAS) coordinated by the NRTC. The RTA and its interstate counterparts (such as Queensland Transport) exempt operators accredited under MMS from having to undergo an annual vehicle inspection. In relation to this scheme, the Inquiry did not obtain sufficient information to make an assessment. It can simply be noted that the scheme, like a number of others, was the subject of widely diverging opinions. Some of those making submissions, including former RTA inspectors and some drivers, suggested it had become a means of evading appropriate checks while others, mostly operators, believed it was working well. The ATA (oral submission, Mike Edmonds) endorsed the scheme and was especially positive about the recognition given to TruckSafe accredited operators in terms of annual inspections, which it believed provided an incentive/endorsement to the latter. The RTA was also supportive of the scheme although one transport association argued that over-vigorous checking during the assessment stage by RTA inspectors who were unhappy with the measure had ‘burned’ a number of operators and their drivers, adversely affecting the scheme’s ability to extend its membership. The Inquiry is no position to evaluate these opinions but believes they should be noted. The remainder of this subsection will deal with a number of alternative compliance schemes that are arguably important in their own right and where the Inquiry was able to obtain sufficient evidence to make an assessment of their role and impact.

5.1.3.1 *Fatigue Management Program (FMP)*

The Fatigue Management Program is a performance-based approach that places the onus on the operator to take responsibility for and manage fatigue of their drivers by identifying all the factors contributing to fatigue not simply driving hours. The main components of FMP are an accreditation agreement, standards and performance management model. This covers driver selection and induction (including medical tests), a 3 month probationary period and the issuing of a driver FMP manual to be carried at all times. Amongst other things, the manual explains fatigue and health (with tips on improving sleep) and a work diary to be filled out for each trip and checked by management (a driver must fill in an interception report if checked

by a enforcement officer and management must investigate this). The FMP model entails a set of working and rest parameters or operating limits covering both a 24 hour (maximum hours worked) and 7, 14 or 28 day cycle (including minimum number of night sleeps, home sleeps and maximum aggregate work hours). For each of these parameters the operator needs to nominate a 'normal' and 'outer or risk' limit (reaching this point signifies the need for corrective measures). Ideally, the FMP enables an operator to specifically match their business needs with work scheduling in a way that does not compromise safety and results in better fatigue outcomes for drivers. As an alternative compliance and quality assurance based-model, operator performance under FMP is primarily monitored by an audit process (conducted prior to accreditation and on a regular basis thereafter), with some back up from on-road enforcement. Accredited independent auditors conduct audits.

The FMP Pilot scheme began in Queensland in 1995 with the accreditation of Nolan's Interstate Transport into FMP Phase 1, quickly followed by McIver's Transport and Rocky's Own Transport. In January 1998 TL Brown Transport became the first owner/driver to be accredited. A large operator Finemores was also accredited in this year and by March 2000 it was reported that a number of other medium and large-sized operators were preparing for the FMP entry audits. The NSW Transport Minister Carl Scully endorsing continuation of the project and establishing specific NSW operating conditions for FMP Phase 2 no doubt assisted this growth. Conditions included monthly FMP operator reports to the RTA, no logbook requirements but vehicles must be fitted with monitoring devices and records stored, no entry to FMP pilot of passenger vehicles and FMP drivers using the Pacific Highway between Hexham and Queensland must meet Transitional Fatigue Management Scheme criteria. However, it was also noted that there had been delays in Phase 2 of FMP designed to give a more precise indication of the impact of the scheme on driver fatigue and business operations (Queensland Transport, *Fatigue Management Pilot Program Newsletter* Issue 3 March 2000).

FMP received support from a number of parties making submissions to the Inquiry. Further, the Land Transport Safety Authority has undertaken a similar pilot program for the scheme in New Zealand.

An excellent program and a viable alternative to log books as a means to measure and manage driver fatigue levels. This is because it addresses the critical areas of driver and vehicle scheduling, employee rosters and the balance between work, rest and driving hours.

The unnecessary delay in widening the availability of this program may bring about its ultimate failure as regulators procrastinate over its value and impact. As logbooks are proven to be totally ineffective in measuring fatigue levels and in the absence of an alternative, the FMP must be fast tracked if we are to seriously address driver fatigue (written submission, Dean Croke).

In the course of its investigations the Inquiry received detailed written submissions from a number of Queensland-based operators involved in FMP that it was able to follow up at hearings held in Brisbane and number of other exchanges. Two medium-sized firms had entered into the Fatigue Management Pilot Program being sponsored by the Queensland Department of Transport. One, a TruckSafe member, undertook a range of integrated activities designed to enhance safety in addition to the Fatigue Management Pilot Program, including a regular newsletter (with considerable safety content). In terms of its commitment to fatigue management, on a number of occasions the company had responded to customer-imposed scheduling problems by transporting a relief driver over considerable distances. From what the Inquiry could discover this was a highly atypical response. At a number of stages the Inquiry received independent verification that company was a leader in its efforts to maintain a safe operation.

The other firm, had in its own words been operating along similar lines to many others - 'totally illegally' until entering the Fatigue Management Pilot Program. This necessitated them to recalculate the freight rates, an action that resulted in the loss of their largest customer and 30% of their business (according to an independent witness to a TruckSafe accredited operator). The company was eventually able to reposition its business to the niche market of refrigerated food, where customers saw a benefit in the reliability/quality of the company's fatigue management regime given experience with existing carriers. Senior management of the firm developed linkages with Trucking Associations in north America (including reciprocal visits and training), enabling the company to introduce driver and vehicle specific smart card technology and black box on-board computers.

The Inquiry was also able to obtain information on a southern Queensland owner/operator (largely engaged in hauling fruit and produce between Queensland, NSW and Victoria) that had entered the FMP pilot with a personal regime. This included night sleeps (avoiding overnight runs), afternoon rests, healthy eating and lifestyle activities, calculating driving hours to allow sufficient rest time, avoiding peak traffic times, resting when tired and re-negotiating unloading times. In both written and oral submissions, the wife and business partner of the driver (an owner/driver representative in TruckSafe) stated that although these FMP measures were costly (and were in no way reflected in freight rates) it enabled them to operate viably (though doing it tough), safely and legally. The operator had resisted pressure to take loads at non-viable rates or to meet unrealistic schedules, in once case telling a freight forwarder to take the load off the truck (and losing a day's work in the process). The combination of FMP and better business planning (including knowing when to refuse job prices or deadlines) enabled the operator to run a successful business with an annual kilometer travelled (less than 200,000) that was low by the standards of other owner/drivers.

At the same time, a number of drivers and operators making submissions to the Inquiry expressed skepticism about FMP, suggesting practice did not always match the model and some operators were using it to extend hours of work. In some cases the criticism indicated a degree of confusion between the different alternative fatigue management regimes (both understandable and therefore a problem in its own right) but this was not always the case. There was also probably justifiable concern that what work for a few operators was unlikely to be embraced with similar dedication by all operators. As noted earlier, operational police were also critical of the confusion/on-road enforcement problems created by schemes like FMP. In its submission to the recent federal fatigue in transport inquiry the RTA expressed concern that some operators wanted extremely long and onerous hours as a condition of entry. The Inquiry was unable to fully reconcile these divergent viewpoints. At this stage, evidence indicates FMP has some promise but it needs a thorough going assessment and in its ultimate success almost certainly depends on complementary measures designed to address the underlying causes of unsafe driving practices that have been identified by this Inquiry.

In particular, there needs to be some way of inducing or binding clients into the scheme. As yet, with a few exceptions, most customers show no interest in 'buying' into the issue through contract specifications. One notable exception is the Coles Myer Logistics Code of Conduct that requires all its contractors to have a 'comprehensive and effective Fatigue Management Program which must comply with all relevant State and Federal laws, regulations and codes of practice' (provisions provided courtesy of the Australian Retailers Association). Assuming Coles Myer takes adequate steps to enforce this provision (including scrutiny of its own scheduling requirements) this is a very valuable step, although once again there is a question of how to generalise individual examples of 'best practice'.

To put the FMP pilot scheme into some perspective a final point needs to be made. There can be little doubt that suitably audited (and this remains an issue of some debate), it is an advance over previous schemes. However, FMP arguably still lags behind the fatigue management regimes currently being implemented (and continuously reviewed) by rail freight

operators such as FreightCorp and National Rail. In their submissions to this Inquiry, these bodies went to some lengths to detail these regimes. National Rail, for instance, has developed a scheme using a fatigue index developed by Professor Drew Dawson at the University of South Australia Sleep Research Centre. It is worth adding that these schemes now cover a significant proportion of train crew unlike the FMP pilot scheme.

To repeat the point, FMP appears to represent a positive trend which requires further assessment, and if confirmed, methods for extending it and providing more effective regulatory support.

5.1.3.2 *The Western Australian Duty of Care Approach to Managing Fatigue*

In Western Australia, unlike other jurisdictions apart from the Northern Territory, there are no specific regulations governing driving hours. In 1997 meetings with representatives of the Department of Transport, industry associations, owner/drivers, the TWU and several experts/management consultants resolved to adopt a 'duty of care' approach to fatigue management. The 'duty of care' approach was based around a voluntary code of practice developed with the assistance of the Worksafe Western Australia (or WWA, the government's OHS agency) and approved under section 57 of the Occupational Health and Safety Act, 1984 in October 1998. After an initial awareness phase Worksafe Western Australian notified the around 1460 transport operators identified within the state that it had an enforcement role. According to the Minister for the Environment and Labour Relations, Cheryl Edwards (correspondence with the Inquiry, 17 August 2000) 313 of these companies submitted a fatigue management plan and 184 of these had been audited. Audits were undertaken by independent auditors (both ex WWA inspectors) who provided feedback to WWA inspectors on compliance with operating standards and components of the code of practice. In the period since WWA took responsibility for fatigue management and August 2000 a total of 452 improvement notices and 17 prohibition notices relating to fatigue management were issued but there have been no fatigue management-related prosecutions since the code was developed. The written submission from Lance Poore from the Regional Policy Section of WA Transport emphasised that despite their best efforts to get operators to voluntarily implement fatigue management it was only when enforcement was introduced that 'things started to happen.'

The Minister (correspondence 17 August 2000) stated that one positive effect of the development was that larger and more prominent transport operators were imposing their own fatigue management regimes on their subcontractors, thus broadening the compliance effect. Again, this point was reinforced by the submission from Lance Poore from the Regional Policy Section of WA Transport. He added that basing the new code under the Occupational Safety and Health Act had been critical to this outcome because of the overarching duty it places on the principle contractor for subcontractors (and the same applies in most if not all other jurisdictions):

The nature of the OS&H Act made this a particularly effective process as large operators were also made responsible for the activities of their subcontractors. In one instance a single prime contractor/operator had over 300 sub-contractors that they used. The prime contractor had to ensure that these sub-contractors had systems in place as part of their system. In effect by targeting the large operators initially the majority of owner operators will have been drawn into the net (written submission, Lance Poore WA Transport).

The capacity of OHS legislation to tie in subcontractors through the duty owed to them (and the duty of the prime contractor to have a safe system of work, including any subcontracted component) has been well understood and enforced by OHS agencies for some years. While it

may too optimistic to presume that this process ties in all subcontractors, or that it is always effectively enforced, the superiority of this approach to conventional regulatory arrangements governing fatigue is clear. Moreover, this regulatory coverage of contractor/subcontractor relationships applies to all safety-related issues not simply fatigue. This observation is particularly important given suggestions about increasingly elaborate chains of subcontractors being used in the road transport industry.

Thus, a noteworthy feature of the Western Australian initiative is its legislative base under OHS rather than road transport legislation. Although there were specific reasons for adopting this approach in Western Australia (including the absence of existing driving hour provisions under WA road transport legislation) it does highlight the practicality of basing road transport regulation and compliance strategies on OHS legislation (and especially the general duty provisions contained within). According to the Minister (correspondence, 17 August 2000), the various regulatory agencies were working well together under this arrangement. The Northern Territory, too, has implemented a code of practice for regulating driver fatigue under the territory's OHS legislation (Moore and Brooks, 2000:2). The NSW Branch of the TWU (written submission, page 21) expressed support for the Western Australian Code of Practice approach based on OHS legislation because of the message it sent to the parties and especially if liability could be extended to clients.

In sum, the Western Australian Code for managing fatigue appears to have significant potential. One important observation to be drawn from recent Western Australian experience is that it provides further evidence to support OHS legislation taking a more prominent role in regulating safety in the road transport industry. Another important observation to be drawn is that enforcement processes played a critical role in implementing the voluntary code.

5.1.4 Conclusion

One major problem with existing voluntary schemes now in place is that they address the symptoms of safety problems in the long distance trucking industry (such as fatigue, poor maintenance etc) rather than the underlying causes of these problems. It is true that a number, such as TruckSafe, either explicitly or implicitly assist member operators to improve their planning and business management skills, and in so doing address one underlying problem. However, even here there are limits because, by and large, the companies attracted to TruckSafe are larger operators where this is less likely to be as important a problem as it is for smaller operators. More importantly, what these schemes do not address is the commercial and industrial practices that this Inquiry has found to be an absolutely critical factor contributing to unsafe practice. Nor are they able to address the issue of the minimal standards set for those entering the industry.

In trying to address the lack of awareness on the part of customers of the implications of cost, scheduling pressures and other pressures (such as unpaid waiting time) for safety, one Queensland-based transport company urged a number of measures to get the 'message' out. This included a government advertising campaign in the electronic and print media, trade magazines as well as government assistance to hold meetings with chain stores, market authorities, farmers and others. The Inquiry would agree that such a publicity campaign could play valuable role but doubts whether this would have more than a minimal impact when used in combination with voluntary schemes. Rather publicity, and the distribution of advice and support materials etc to relevant parties, would work best in conjunction with selective high-level prosecutions. These reinforce the message and generate their own publicity/awareness amongst key decision-makers, something high profile prosecutions by the EPA and WorkCover NSW (such as those in relation to labour leasing) clearly demonstrate. In short, publicity is an important adjunct to but not a substitute for a compliance policy that includes a mixture of inducement ('carrots') and deterrent ('sticks') measures.

Apart from questions of compliance and their failure to address root causes, the major limitation of existing voluntary schemes is that they simply do not demonstrate the capacity to attract a membership level sufficient to change industry practices more generally. It needs to be remembered that these schemes were, at least in part, proposed as an alternative to external measures such as operator licensing. The schemes are still advocated on these grounds but a basic observation needs to be made. The number of accreditation schemes has expanded but, in the absence of industry benchmarks, this diversity creates confusion (this and other issues were recognised at an accreditation workshop held in Melbourne in 1998. See Barnesby and Hassall, 1998 and Hassall, 1998). The most widely praised flagships of this approach, namely TruckSafe and FMP have now been around for almost a decade and over five years respectively. Overall, membership of these schemes remains very small. While some other schemes are in their early stages no compelling evidence was presented to the Inquiry as to why the newer schemes would prove any more attractive than their predecessors. The structural characteristics and competitiveness of the industry are such that a significant number of operators outside the schemes (not just a few 'cowboys') are not simply agnostic but will be induced/pressured by financial circumstances to secure work/get a commercial advantage by evading the law/undercutting legitimate operators. A sober assessment of the long history of sustained and widespread regulatory evasion in long haul road transport amply demonstrates that voluntary schemes can encourage some operators to adopt better processes of internal responsibility but relying on them to alter the character of the industry would be naïve.

At the risk of belabouring the point, voluntary schemes should be supported where they provide demonstrable evidence of improving OHS performance amongst trucking operators. However, given concerns raised these schemes should be subjected to regular external assessment and the overall value of the schemes should be evaluated. In its investigations the Inquiry was surprised to learn that evaluative measures had not been taken in many cases (and the results made public). Further, there is no evidence that these schemes, taken individually or as a whole, have either the membership reach or address the underlying causes of unsafe practices in such a way as to alter safety across the industry generally. Incentives to boost membership, such as discounts on insurance, have their own problems (eg inducing claim suppression) and will not, in any case, attract those operators who most need to lift their game. Crucially, cut-price operators will continue to thrive so long as clients are predominantly cost-conscious and feel they have little if any obligation to the safety of truck drivers or other road users. Some customers impose stringent conditions on quality (in terms of safeguarding the freight), demonstrating that, despite claims to the contrary made to the Inquiry, similar requirements could be extended to safety.

Not all clients fit this mould, and indeed some like BHP have gone to some effort to restructure transport arrangements on safety grounds. BHP is a major user of the road transport industry, moving over 6 million tonnes of product over a total distance in excess of 80 million kilometers by road each year. BHP Transport and Logistics has developed a fatigue management program, which it is encouraging all transport suppliers to adopt (as well as bring all subcontractors into line with its safety objectives). This was developed in partnership with transport companies and some of BHP's customers. The fatigue management addresses a number of the risk factors identified by this Inquiry including delivery arrangements and scheduling, loading/unloading facilities, reducing queues and delays. Indeed, the initiative was very much a response to the recognition that only about 40% of fatigue issues could be managed by the transport company with the remainder residing with customers, notably queuing at both ends. BHP has the market muscle to exert a significant and positive influence on the safety performance of the transport operators it engages. However, the evidence available to the Inquiry indicated developments like those at BHP were exceptional.

There have been some other attempts to address this issue, and this is discussed in the next subsection.

5.2 Voluntary Codes Dealing with Transport Operator Relations with Consignors, Clients/Customers?

As already noted, many of the attempts at improving compliance/raising safety standards in road transport through collaborative/self-regulatory compliance regimes or voluntary codes fail to address the underlying source of these problems (unless the problem is construed only as a result of poor management practices by transport operators). A critical issue that needs to be addressed is the relationship between transport operators and consignors, clients and load receivers. As yet there have been few if any serious attempts to do this.

The Inquiry understands that late in the year 2000 the ATA held discussions with the ARA on mutually agreed principles (and reflecting the ARA's expressed willingness [oral submission] to enter into a consultative process with regard to problems). There have been efforts to implement similar measures in other countries such as the USA. In the USA the Truckload Carriers Association has sought to revise an older code of ethics prepared by the National Industrial Transportation League (or NITL, an association of shippers and retailers) in a more comprehensive *Shipper/Receiver/Carrier/Driver Guide to Good Business Relations*. This move followed concerns at waiting time at loading docks and the adverse effects this was having on driver alertness and reducing driving time to make the next scheduled delivery – in other words, the same issues raised repeatedly in the course of this Inquiry. The Guide, yet to be adopted by the NITL as at May 2000, covers a wide range of issues couched in terms of non-legally binding obligations of the respective parties to each other. Section 1 D refers to the shippers/receivers expediting the movement of equipment. Amongst other things, this includes bearing responsibility for loading/unloading and providing prompt loading/unloading when trucks arrive at the scheduled time (not unreasonably refusing to reschedule if circumstances change or if trucks arrive early/late). The section also urges making arrangements to contact drivers (so they can leave the site) if dock space is unavailable (information provided to the Inquiry by Barry Moore, NRTC). The guide clearly states it is not seeking to establish legal obligations or an industry standard.

The spirit of the Guide, assuming it is adopted, is commendable. However, the 'obligations' are phrased in ambiguous terms and what is actually required to meet the guide could easily prove to be the subject of considerable differences of opinion. The question needs to be asked, if the guide sets no legal obligations or no benchmark standard, and there are no measures for assessing compliance/non compliance, then what effect is it likely to have? In other industries, such as clothing manufacture (OHS and labour standards) there have been attempts at voluntary codes, including labelling systems, in Europe, Australia and the USA over a number of years. Invariably, however, there have been serious problems getting parties to 'sign up', to back this with meaningful attempts to ensure compliance or for agreements to survive in anything but name for more than a short period. The experience is that, even where adopted, some companies treat the code seriously but others who do not gain a competitive advantage (in terms of lower costs). In a fragmented and intensely competitive industry like road transport it is difficult to envisage anything but a similar outcome. In Australia, there is the added disadvantage of having no broadly representative body of major transport clients (like the NITL in the USA), although the ARA is clearly a pivotal body.

Some individual customers of road transport have been far more decisive in incorporating legally binding requirements in relation safety, and in a more comprehensive way than the Coles Code of Conduct on fatigue mentioned above. For example, in its written submission FreightCorp referred to the intermodal PortLink strategy on the movement of containers – the highest growth area of rail freight – which involves contracts with road transporters (so as to offer a door to door service) as well as road alliances in relation to transporting grain. In both

areas FreightCorp's road alliance contracts include safety clauses requiring road operators to comply with legal limits on gross weight, safe loading/unloading and load restraint procedures, speed and other traffic rules, road transport driving hours regulations, and designated routes set by local councils. Failure to comply with these clauses can lead to termination of the contract (written submission at page 2). Backed up by suitable auditing and contractor selection procedures, this provides a model for both load owners/receivers but also for subcontract arrangements within road transport since FreightCorp is both a client of road transport in this area as well as another link within the transport chain.

In addition to the measures just described, the TWU has sought to address the issue by negotiating a code of practice with both transport companies and major customers of road transport. The codes set out reciprocal obligations, including the notification and sharing of information on illegal (such as award and OHS law breaches) or exploitative practices and a dispute resolution procedure. With regard to the customer code (which the TWU is seeking to negotiate with major retailers) it requires customers to keep records of all transport contracts of the previous six months (including specific information such as payment, route used etc). Information on transport providers, including owner/drivers and subcontractors, is to be forwarded to the TWU on a regular basis and there are procedures for addressing situations of exploitation. The Inquiry is unaware as to whether any customers have signed onto this code. Such negotiations are likely to prove difficult in a context where regulators have failed to demonstrate the obligations (under both chain of responsibility and OHS legislation) of both transport operators (including those who subcontract) and their clients. A related difficulty would be client fears that signing such an agreement would entail losing a competitive advantage to their rivals. In a sense, this highlights a more general point, namely that voluntary agreements may prove easier to negotiate once regulators establish mandatory standards and demonstrate the risk of flouting these. In other words, far from being a substitute to mandatory regulation, voluntary agreements may act more as a complement.

5.3 Will self-regulation work in the long distance trucking industry?

The fact is that self-regulation is no regulation at all when competition, as in the trucking industry, is the driving motive (comment by County Court Judge Paul Gebhardt sentencing truck driver for negligently causing the death of another road user. Cited in *Transport and Distribution Newsletter*, 25 March 1998).

Even at the height of the popularity of self-regulation policies in the 1980s its applicability to the road transport industry was seriously questioned within the industry itself and specifically with regard to Codes of Practice being proposed at the time. In its 1989 report *Concerning Alert Drivers and Safe Speeds for Heavy Vehicles*, STAYSAFE noted:

…a Code of Conduct was proposed to STAYSAFE by the representatives of the Long Distance Road Transport Federation, but representatives agreed that the industry needed Government help in holding all parties to the behaviour prescribed in the code (STAYSAFE, 1989:23).

In a report published by STAYSAFE the following year Mr H Close, Executive Director of Energy Resources for TNT Ltd and Chairman of the Australian Road Transport Federation's Technical Advisory Group was asked whether he thought the industry had done enough by self-regulation, to make motorists feel safer. Close's response was:

No. Self regulation is a joke…I don't think it started from us, however, I think it started from probably the Federal Government when there was concern, however expressed from different quarters about truck safety and nobody knew what to do so they said pass the ball, let's go

into self-regulation. What does that mean?…If you find out tell me. I drew up a code of safety conduct for ARTF which wasn't accepted because it was too short, it said "obey the law." (cited in *STAYSAFE 16*, 1990:26-27).

Drawing this and other evidence together the STAYSAFE report concluded:

STAYSAFE agrees that self regulation, alone, is often not enough to secure appropriate behaviour. There is an obvious need for surveillance, incentives or penalties, and government administered audit, whenever there are large commercial pressures encouraging transport operators to illegally compromise the safety of the public. The operators may be required to gather records (such as tachograph reports), but ultimately there has to Government audit to ensure the surveillance are remedial action are undertaken properly (*STAYSAFE 16*, 1990:27).

Some bodies saw a role both for self-regulation or voluntary accreditation/alternative forms of compliance and external regulation, though even here there were differences of opinion about the balance struck between to the two. The RTA, for example, argued it was appropriate to maintain a mix of regulations on safety issues with some industry-based accreditation initiatives such as TruckSafe (written submission RTA, executive summary). As was noted in the discussion of enforcement (Section 4 of this Report), to bodies like the ATA and NRTC the use alternative compliance regimes and other voluntary or incentive-based measures was seen as a key element in 'smart compliance'. The ATA strongly argued that a combination of carefully targeted enforcement along with alternative compliance programs and voluntary accreditation bolstered by suitable commercial incentives could and would yield a significant improvement in safety performance over time. The same view was expressed by the QTA, Livestock Transport Association of NSW and a number of large transport operators although some referred to the dilemma that while they believed self-regulation had made progress in recent years operators embracing this had not recouped their costs in the face of competition. As one operator observed:

The benefits gained by operators who have embraced the new learning of self-regulation has fallen short of the competitive needs when measured against those operators who wilfully break the law (written submission, large NSW based national transport operator).

Even those (few) organisations that were most critical of the existing regulatory framework, and favoured a more voluntarist approach, making fuller use incentives and alternative compliance regimes, saw both limits to self-regulation and the need for external regulation. For example, Robert Gunning, executive officer with the Livestock Transport Association of NSW (oral submission) stated:

We're certainly strong advocates of maximising self-regulation but we don't actually believe that an industry can successfully self regulate. There's got to be a public interest role in surveying what's happening in the self-regulatory environment and thinking out strategically the problems and making a fix them from a purely public interest point of view. Systems that industries recommend for themselves in our view just end up being rorts.

Amongst other industry associations the NSW and Victorian Road Transport Association's expressed even less confidence in self-regulation. For its part the Victorian Road Transport Association (oral submission) argued that the industry was simply to diverse for self-regulation to succeed and advocated both operator and enhanced driver licensing:

We've had a look at the British system [of operator licensing] because we don't believe self-regulation will work, given the nature of the industry…. Its so diverse, there are so many different sectors. Self-regulation just can't touch it. Where do the farmers go? Where does landscape gardening fit in…They'd just ignore it.

In the course of investigations, a range of parties expressed outright skepticism as to the efficacy of voluntary codes of conduct or other forms of self-regulation, especially in the case of the transport industry.

I think the evidence is out there that self-regulation is a very big ask in such a competitive industry…I would support government regulation with minimum standards (oral submission, Associate Professor Phillip Laird, University of Wollongong).

The Transport Workers' Union expressed no confidence in self-regulation, with the NSW Branch (written submission, page 18) stating:

Self-regulation has not and will not work in the transport industry because the economic imperative to ignore regulation is too great.

The TWU's stance may be regarded as not unexpected but what was less predictable was the equally strident criticism of a number of other organisations. For example, the Insurance Council of Australia (written submission, Dallas Booth, page 2) was emphatic in its view:

We seriously question whether voluntary codes will work in the transport industry. To have the best chance of success there needs to be a set of laws/rules/procedures put in place and these need to be backed up by a truly effective enforcement regime together with penalties for those who break the law which act as a real and measurable deterrent to undesirable behaviour on the roads.

An ex-driver, with 25 years experience of driving in Europe, the USA, South Africa, New Zealand and Australia before completing university degrees in Commerce (specialising in Industry Economics) and Economic Geography, also expressed severe reservations about the effectiveness of self regulation in such a competitive industry:

Self-regulation is simply a joke, as the road transport industry is very competitive (too many trucks chasing too few goods), so almost every operator 'cuts the corners' in order to save a 'few bucks'. In relation to the trucking industry the ordinary 'laws' of economics do not apply: when demand for services drop, supply of those services actually increase, instead of decreasing, as the desparate truck owner-drivers have to carry more and more goods in order to earn the same amount of money on the depressed market (they need minimal amount of money to pay fixed costs, such as taxes, registration fees, scheduled maintenance etc). The truck owner-drivers have simply to work (ie travel) more, in order to earn the same amount of money on the depressed market where prices for their services drop. Thus this market is virtually never in equilibrium, so the 'orthodox' economic theory is simply useless, and all models based on the assumption that the market eventually reaches equilibrium are simply misleading …. The long haul trucking industry should be highly regulated…regulation should include shorter working hours for all drivers and mandatory two drivers per every long-distance truck (written submission, Victorian-based ex driver).

Widespread skepticism about the effectiveness of self-regulation was matched by calls for more interventionist external regulation.

I do not believe that the industry is able to regulate itself, as it has many cultural barriers which would not support the concept of self-regulation. I believe the industry needs enforcement from an external body. This enforcement must be effective in that it must be applied uniformly and have penalties which are real and ultimately result in repeat offenders being removed from the industry (written submission, person involved in interstate bulk haulage of agricultural product between Queensland and Victoria).

Industry self control will not work so there needs to be the controlling hand of law enforcement (written submission, woman who had worked in roadhouses and had later undertaken research on the trucking industry in Western Australia).

What was interesting to the Inquiry was the number of owner/drivers advocating regulatory intervention. Notoriously hostile to regulation of any form in the past, a number stated that they had been driven to revise their views by the dire straits they now faced and the abject failure of earlier attempts at collective action (such as the Razorback blockades of 1979) and voluntary agreements. Not one owner/driver the Inquiry spoke to believed a voluntary code, such as that recently discussed federally, had any chance of working (and this included owner/drivers engaged in negotiations with the federal Minister for Transport). Most were scathing of the whole concept of a voluntary code given the fractured and competitive nature of the industry. One owner/driver (oral submission, owner/driver, NSW) explained why previous efforts had failed and his belief that a regulatory solution was essential:

The other biggest problem is with so many individuals [owner/drivers], that with so many different ideas, they won't stick together. We believe if we can get a legislated minimum rate standard that you can still operate your vehicles safely, working legal hours, and meeting all that criteria, we can't see that its such a great problem for the government. What is safety worth to them?

The partner of an owner/driver who represented owner/drivers on the ATA and had no involvement in the owner/driver protests/code push made (oral submission) an essentially similar point.

...I really don't think [it] will work in the industry because even if you get the major players in the supply chain to sign up to this, part of the problem in the industry is the minor players that will never ever play to the game if it's a voluntary code of conduct

The choice between self-regulation and external regulation does not devolve to simply which is more popular amongst the various stakeholders. Nor is the choice necessarily as simple as sometimes portrayed. In this industry, there is a diversity of views as to what constitutes self-regulation, though virtually every party making submissions to the Inquiry saw external regulation as continuing to play a significant role. Many also expressed some measure of support for some level of more voluntary measures, though here opinion was far more divided. What can be said is that, amongst a very wide range of parties there are serious misgivings about whether modes of compliance that depend heavily on a voluntary commitment on the part of the responsible parties, is feasible in this industry, given its structure, competitiveness and other characteristics. After weighing up the evidence the Inquiry shares these concerns.

Conclusion

Proposals for the introduction of Codes of Practice to address safety issues in the long distance road transport (including the respective responsibilities of employers/principal contractors, drivers and subcontractors) have been around for well over a decade in New South Wales (see for example STAYSAFE 1989:29). Even at that time, persons with considerable knowledge of the industry expressed severe doubts as to whether these Codes could be effective without regulatory intervention by Government to ensure compliance. While a number of submissions to this Inquiry argued for a voluntary or collaborative approach this was a minority viewpoint. A collaborative/high trust approach might work in an industry with relatively few and large operators and where there is the ability to restrict access to new players unless they demonstrate they can meet the new standards. This is arguably the situation in the rail freight sector but it is certainly not the situation with regard to road freight

where there are numerous operators, virtually no formal barriers (apart from a truck license or licensed driver) to new entrants, and a high turnover of businesses. The Inquiry repeatedly asked both those advocating the use of voluntary codes and others for suggestions as to methods for ensuring this approach would achieve sufficient coverage to have a meaningful impact on industry practices. A number of incentive schemes were suggested, but has been noted these have limitations. It needs to be noted that attempts at self-regulation in the industry now stretch back well over ten years and a dispassionate assessment would have to be that, while some measures may have influenced some operators, they have not wrought the fundamental shift in industry performance that is required. Overall, it is the strongly held view of this Inquiry that neither self-regulation nor voluntary Codes, however defined, are likely to have more than marginal effects in such a competitive and atomistic industry. As previous history more than amply demonstrates – for a substantial number of operators the incentive/pressures to evade them is simply too great.

5.4 Accreditation or Licensing of Operators and Drivers in Long Distance Trucking

One issue that highlighted the debate over the most appropriate form of regulation was the accreditation or licensing of both operators and drivers. At present, drivers require an appropriate truck license, obtained either after a test conducted by the RTA or after undertaking a competency-based course. The Inquiry heard evidence that this license alone was not sufficient to operate safely and further driver education and progressive accreditation would enhance safety and would also attract higher quality drivers to the industry. For their part, transport operators at present require no license to operate (apart from a driver's license if they are an owner/driver). Again, a wide range of parties presenting evidence to the Inquiry either proposed or favoured/endorsed some form of operator accreditation. In both areas, but especially in relation to operators, there was debate as to whether this accreditation should be mandatory (effectively amounting to a form of licensing) or whether it should be voluntary with various forms of inducement to encourage a 'take up'.

It should be noted that (with the exception of buses and taxis) the road transport industry is in a unique position of being the only mode of mass transport in Australia that is exempt from any form of operator licensing even in the long distance category. Those operators whose business involves moving either people or goods by air, by water/sea or by rail all require an operating license that includes stringent safety provisions. It is hard to see a logical reason for this exemption in terms of size or safety record. Indeed logic suggests the reverse should apply since road moves far more freight than rail or air and entails a far greater level of risks to its own workers (truck drivers) and members of the public (pedestrians, bystanders and other road users). Nor is the notion of operator licensing unknown in road transport overseas. Indeed, two countries with which Australia policy makers often draw comparisons (New Zealand and the United Kingdom) both have mandatory operator licensing in the road transport industry.

Not surprisingly, rail freight operators and their representatives were emphatic in their view on this issue, arguing in the strongest terms that is was unacceptable that road freight operators should gain a competitive advantage via having to meet far lower safety standards. All operators must be certified to nationally recognised standards (refer to AS 4292) and are subject to re-certification every two years, including refresher training (written submission, National Rail Corporation, page 5). In its submission FreightCorp noted that the NSW rail industry was regulated by the Rail Safety Act 1993, with the Department of Transport setting objectives that operators had to meet through internal safety management systems, including implementation, auditing and policing of safety programs (including incident reporting). The safety regime also included re-certification and re-accreditation of field operators, including train crews, every two years. It noted that unlike truck drivers, train drivers underwent periodic re-testing and extensive medical check-ups, must learn the characteristics of each track before they were authorised to drive on it, and the checking and response to speeding

(using running times and data loggers) was far more rigorous. The same can be said in relation to drug use, where rail freight operators maintain detailed and comprehensive monitoring/testing, counselling and remedial schemes – in stark contrast to the dominant practices found in road transport. Further, as was noted earlier, both FreightCorp and National Rail utilise shiftwork and workload regimes beyond what is required by government regulations and arguably far more advanced and stringent than the most progressive elements in the road transport industry. This included transport/return to depot arrangements (including crew exchanges) and where this was not possible the provision of quality accommodation. It should be stressed that rail freight bodies were not seeking a diminution of the safety standards they were required to meet. Rather, they strongly urged that road freight should be regulated in a similar way and to a similar level as they were.

The present absence of any form of operator licensing or accreditation was linked to specific problems in the industry. For example, as was noted in an earlier section, the submission of the Traffic Services Branch of the NSW Police Service argued that an effective prevention strategy on drug use required addressing issues such as ease of entry into the industry without any form of training or business skills.

Some bodies making submissions to the Inquiry believed the objectives of operator licensing could be better achieved by other methods. For its part, the NRTC argued that its chain of responsibility regulatory approach was designed to achieve the same ends as operator licensing and would cover more parties, although readily conceding without prompting that this was still to be tested (oral submission, Barry Moore). The Inquiry would also observe in passing that chain of responsibility would represent at best a reactive approach to the problem of those entering the industry without business skills and indebted. The NRTC pointed out that in order to recommend a mandatory system such as operator licensing they would have to convince the Office of Regulation Review:

...through a fairly hard-edged cost/benefit analysis that you could have reasonable expectations of safety benefits which would justify the costs imposed by those sorts of measures. We've never even tried to do those numbers and I don't know how you'd go...(oral submission, Barry Moore, NRTC).

This observation is an interesting one in several respects.

Others, such as number of medium to large operators, argued for a continued emphasis on voluntary forms of accreditation bolstered by insurance premium discounts and other incentives.

The notion of mandatory operator licensing has been vigorously opposed by some organisations, including the Australian Trucking Association (ATA).

The ATA is strongly against any form of prescriptive licensing, believing that a performance based approach will be much more effective (written submission ATA, page 6).

Robert Gunning, Executive Officer with the Livestock Transport Association of NSW (oral submission) also expressed opposition to operator licensing, pointing to the economic inefficiency of the US trucking industry when it was highly regulated according to region/distance and type of freight. The association was also very conscious of its role as part of an export industry.

Some other industry associations did not share this view, with the Victorian Road Transport Association (written submission) endorsing entry standards for both operators and drivers, and highlighting the example of the UK that has an operator-licensing scheme:

It is interesting to compare with the UK where a company must establish its bonafides at a specific level prior to entry into the industry. Likewise drivers must establish competency in all areas relating to the freight task prior to be [sic] licensed and be subject to annual audits.

The notion of operator licensing, perhaps surprisingly, found support amongst some owner/drivers and small fleet operators although a number stressed the number of licenses should not be limited as is the case with the taxi industry.

If I want to go from an electricians license, which is like a truck driver license, to a contractor's licence now, I have to actually have to go and do business management skills, then I have put insurance in place to cover people for work and what I do. So its licensing the industry but its not restrictive licensing which a lot of people in the industry are afraid of (oral submission, small fleet operator (10 trucks), Northern NSW).

Not enough owner/drivers or fleet operators responded to this issue for the Inquiry to suggest that the majority would favour licensing. However, the Inquiry was surprised at the number of even small operators and owner/drivers who believed the parlous situation in the industry now required some form of entry standard so long as it was not used to limit the number that could achieve this standard. At the very least, it cannot be presumed that operators would vehemently oppose a licensing system. Further, without a quota on the number of licenses it is reasonable to presume the industry would remain highly competitive (as the experience in other countries amply demonstrates, see below).

The Transport Workers Union also favoured the introduction of operator licensing. It somewhat surprisingly received support from a number of owner/drivers making submissions to the Inquiry even though it would directly impact on them most.

As noted in an earlier section of this Report, the need to enforce some minimum standards for operators has been accepted and indeed recommended by a number of previous inquiries into the industry. Indeed, it was a central recommendation of two inquiries into the road freight industry. In 1980 an inquiry into the NSW road freight industry (McDonnell, 1980) recommended the introduction of operator licensing administered by a body to be known as the NSW Hauliers Licensing Tribunal. This recommendation flowed from McDonnell's observations of problems faced by owner/drivers culminating in the Razorback blockades of 1979. In 1984 the National Road Freight Industry Inquiry (May et al, 1984) also proposed an operator licensing system to make transport operators more accountable for the ways their trucks were driven. The federal legislation to achieve this was passed but never implemented (it would have only covered interstate operators not all long haul operators so required complementary state legislation). The reasons for this are unclear though according to one source (oral submission, Robert Hogan, federal Department of Transport and Regional Services) it appears there was 'no great enthusiasm' for the scheme amongst the States or industry. The November 1987 ATAC, forerunner to the Australian Transportation Council of all transport ministers, decided to look at some form of self-regulation or voluntary accreditation in preference to operator licensing. Whether industry should have had a say, given the findings of the McDonnell and May reports and subsequent the serious deterioration in trucking safety that followed in late the 1980s, is a moot point. However, in the wake of Cowper and Clybucca smashes of 1989, NSW did respond by introducing a licensing/accreditation system covering buses (along with tachographs on trucks – a move resisted federally in favour of the option of speed limiters).

Bodies currently opposed to operator licensing generally gave the reason that it did not work, voluntary performance-based measures were superior or that licensing would become a means of raising revenue. The argument that licensing did not work was not shared by others including the Victorian Road Transport Association which had examined the British system and noted:

In England if you want to open a transport company you have to make application to a committee. You have to prove that your financially able, that you've got the management skills, that you've got appropriate maintenance standards… Now we are now talking to waste industry in Victoria for exactly that reason…they are concerned about rogues getting into the industry. Now the English system the carters' license as it is called is a very high profile …document, they are audited every year, they have stickers on their trucks and if they speed, if they overload or if they go outside the driving hours they get demerit points, and they can actually lose their carters' license (oral submission, Peter Robinson).

One of the association's representatives to the Inquiry had worked for a major transport operator with strong links to the UK and said his association with UK-based managers confirmed that the system did work. The Association also pointed to the dramatic turnaround in the Victorian taxi industry, which followed the decision of the Kennett Liberal government (perhaps ironic given its reputation for deregulation) to reject moves to deregulate the industry proposed under the previous Kirner Labor government and adopt a far more regulatory approach.

Nor was the view that licensing didn't work shared by operational police the Inquiry spoke to. One experienced police officer (oral submission) saw the experience with bus licensing in NSW as both successful and instructive when compared to long haul freight trucks.

I look at the tourist coach accreditation. When it came in it was a bit a big stick. It was enforced on the industry after those horrific crashes up the north coast… The company had to be accredited, drivers had to be accredited…Quite strict guidelines were introduced and that was enforced by the NSW Department of Transport who had quite substantial legislative powers to conduct audits and whatever. We supplied them with information for tourist coaches we detected speeding… It's made a hell of a difference. I look at the amount of tourist coaches we stop and check their logbooks as much as everyone else and check them for speeding…and the amount of non compliance is minimal. The difference - I saw what it was was like years ago, it was open slather, the same category as trucks doing 120, 130, obviously substance abuse but now its just a complete turn around. The amount of tourist coaches you detect speeding on the open highway is virtually nil. I thought the thing there was that there was accreditation system brought in and audited by a government external body and that body had quite substantial powers. I believe a lot of companies went under but I sort of look at what's happening now.

When asked about the UK operator licensing system opponents of suggested that the UK transport industry was very different to Australia and the scheme had not worked. While there are some obvious differences in terms of distances travelled (though note these trucks travel all over the European Union), road type etc there are also some important similarities. For example, in terms of industry structure, like its Australian counterpart the British industry includes a large number of small companies and self-employed drivers (90% of fleets have fewer than five trucks and 50% have one truck) and a very small number of large operators. Like Australia, the standard workhorse of the industry is a 38-40 tonne articulated lorry. Like Australia, heavy vehicles make a disproportionate contribution to the overall road toll (although the toll is low by Australian standards), accounting for 7% vehicle kilometers travelled but 15% of all road fatalities. As in Australia, there has been debate about the sustainability of freight rates and serious concern that ease of entry into the industry and a consequent over-supply of operators has compromised safety. As the National Road Freight Industry Inquiry (May et al, 1984) argued for Australia, operator licensing was introduced in an effort to address these issues. As a recent inquiry conducted by the Environment, Transport and Regional Affairs Committee (2000:xiv) of the House of Commons observed:

The Traffic Commissioner issue operator licences ('O-licences') to individuals and companies who wish to operate goods licences which weigh over 3.5 tonnes. Their objective is to ensure the safe use of goods vehicles and fair competition between operators, and before issuing a licence a Commissioner must be satisfied that the applicant is fit to hold it, has a suitable depot with proper maintenance facilities and sufficient finance to keep their vehicles roadworthy. The decisions of the Traffic Commissioners are in part based on European Union legislation relating to the good repute of operators, their financial standing and their professional competence, which requires, for example, that operators or their transport managers must pass a Certificate of Professional Competence (CPC). The Government has also aligned regulations governing the construction and use of lorries with relevant European Directorates, and thus the brakes, suspension, dimensions, and so on are controlled.

Unlike submissions opposing operator licensing made to this Inquiry, the Environment, Transport and Regional Affairs Committee did not find operator licensing had proved ineffective. Indeed, the tenor of debate was that the licensing system should be made more stringent. The Committee (2000:xvi-xvii) accepted evidence from industry and other witnesses that deregulation had made the industry too easy to join, creating an oversupply of operators that depressed haulage rates and compromised safety. It found that the profitability and viability of road haulage companies had been undermined by the longstanding problem of very low haulage rates. Rates had been kept low by a combination of entry into the industry being too easy, competition from other European operators, and some companies within the industry routinely ignoring regulations in order to gain a competitive advantage. The Committee believed it was essential for hauliers to be able to pass on their true costs to their customers, and ultimately to the consumer. The Committee (2000:xxii) resolved to make licensing entry conditions more stringent:

We therefore recommend that the financial conditions which we must before hauliers are granted an O-licence be increased substantially to ensure that new entrants to the industry are not financially unviable companies able consistently to undercut existing operators. It is important nonetheless that barriers to entry to the industry should not unduly deter small operators in favour of larger companies. The road haulage industry must remain a fully open and competitive one.

At the time, a person seeking an O-licence needed to show they had access to approximately 3,600 pounds (or 80% of the amount deemed necessary under EU Directive 98/76/EC to obtain an International Licence) whereas the Committee heard evidence that an amount of 20,000 pounds was more appropriate.

Operator licensing is by no means confined to the United Kingdom but has been long adopted by a number of other countries. Operator licensing was also implemented in New Zealand under the Transport Services Licensing Act, 1989. The New Zealand scheme requires good service holders to have a certificate of knowledge of law and practice of how to run a safe and proper operation. The legislation provides a mechanism to remove (from road operations or freight forwarding) operators who put safety at risk. A written submission from Associate Professor Philip Laird of Wollongong University argued that the New Zealand system was a good one in principle but had not been effective due to a lack of enforcement as highlighted in the 1996 House of Representatives inquiry into truck smashes (Storey, 1996). One outcome of the report was an investigation of the 'fit proper person test' undertaken by the New Zealand Office of the Controller and Auditor General (1996). The Office found that with the exception of one region (Hamilton) little action had been taken to review the 'fit and proper' status of operators. It was noted that one region had recently adopted an approach of based on discussions with police to identify problem operators, examining their conviction history, establishing the number of trucks they used and distances travelled, and obtaining information from truck testing stations. However, in another region there was little contact between Land Transport Safety Authority (LTSA) compliance staff and police, with one small operator (six

trucks) having accumulated 139 offences since 1985. While the LTSA had considered the level of offending by this operator in 1992 no action had been taken subsequently to review whether the operator was still 'fit and proper' in terms of the Act (New Zealand Office of the Controller and Auditor General 1996:23). The report also identified an emerging problem of unlicensed operators, openly flouting the system. One such operator had incurred literally dozens of traffic and truck safety offences as well as fines from the LTSA for carrying out an unlicensed service (the operator defied a court order to surrender their trucks. New Zealand Office of the Controller and Auditor General 1996:23-24). The report urged that the LTSA should revise measures with regard to the determination of 'fit and proper' operator and propose an amendment of the Transport Services Licensing Act to enable it to compel the surrender of vehicles by unlicensed operators.

In the aftermath of the 1996 parliamentary report there was crackdown of sorts on truck operators with 21 having their licenses cancelled over the next three years for offences such as faulty brakes, damaged steering and overweight loads (Pickmere, 2000). However, whether such a small number of cancellations would have a serious deterrent effect is debatable. The LTSA is also responsible for operator licensing in relation to rail freight, and a recent inquiry into Tranz Rail following a number of serious incidents, again identified problems in relation to enforcement (New Zealand, 2000). Like Associate Professor Laird, this Inquiry formed the view that the New Zealand scheme had failed largely due to a lack of effective enforcement (at least partly due to under-resourcing of the LTSA). Lack of enforcement, including the failure to exclude unfit operators, is a serious problem. However, it does not indicate that the licensing system itself is flawed so long as it is vigorously enforced and the sanctions for non-compliance are sufficient to act as a real deterrent to flouting the system.

The exclusion of 'unfit' operators for failing to meet certain standards is a more reactive and often resource-costly process than excluding operators from a license at the application stage, both are essential and there are clear signs that the need for these processes is being increasingly recognised in other countries.

In the USA the Department of Transport recently introduced a major change to fitness procedures under Federal Motor Carrier Safety regulations will require all "unfit" motor carriers to improve or cease operating their trucks and buses in interstate commerce. The new rule promulgated under the Transportation Equity Act and taking effect on 20 November 2000 significantly expanded the coverage of shutdown procedures to all motor carriers (the previous rule only covered passenger and hazardous material [HAZMAT] carriers with unsatisfactory ratings). Under the rule, the Federal Motor Carrier Safety Administration (FCMSA) will deem an unsatisfactory safety rating as a determination that a carrier is unfit. Investigators assign safety ratings as a result of compliance and on-the-road performance reviews. Following a FMCSA determination of unfitness, motor carriers have 60 days to improve safety or cease operations apart from passenger and HAZMAT carriers where the pre-existing 45-day time limit applies. The FMCSA may extend the compliance period by 60 days but only if the carrier is making a 'good faith' effort to improve its safety fitness.

It is the view of this Inquiry that voluntary systems of accreditation have failed to deliver the promise of raising the safety performance level of a substantial number of operators in the long haul road transport industry. At present, the operators in the road freight industry can, unlike operators in rail freight and other modes, undertake their business without a operating license and without a formal review of whether they meet minimum standards. Like the National Road Freight Industry Inquiry (May, 1984) this Inquiry believes a licensing system for the industry is essential if safety issues are to be effectively addressed. This would set minimum standards and the administering body should have sufficient resources and powers to ensure the system is vigorously enforced. As noted elsewhere in this Report, the RTA has already exercised a power for suspending the operating privileges of both NSW and interstate-based transport

companies on NSW roads. Thus far, this power has only been used against the most recalcitrant operators. The Inquiry believes a licensing system with appropriate measures for suspending or cancelling licenses would provide an effective mechanism for ensuring all operators reach a base level of safety performance. Such a system places a strong commercial pressure for compliance (as recognised by May et al) and as such would address the cause of unsafe practices – a key weakness in many existing regulatory devices. This system should apply to freight forwarders, consignors and other key players in the transport chain as well as operators.

5.5 Conclusion

It is essential that the form of regulation used should, as far as possible, be informed by an understanding of the root causes of safety breaches/hazardous practices. Regulatory remedies that fail to recognise or directly address the root causes of hazardous practices are likely to prove largely ineffective if not a complete failure. As the previous two sections (4 and 5) of this Report have shown, there are serious limitations with existing regulatory arrangements and their enforcement in terms of addressing the commercial practices and industry structure that are a major underlying cause of excessive hours, speeding, drug use and other safety problems. Many submissions stressed this point, and a number of submissions suggested specific solutions.

For example, the Insurance Council of Australia stressed the need for regulations to ensure load owners/clients, consignors, freight forwarders and transport companies took responsibility for their actions when they set or demanded (in the case of customers) unrealistic deadlines or consignment arrangements that clearly breached speed limits etc. The Council argued that liability should not only extend through the entire supply chain but that individual parties, such as Directors, managers and consigning agents be held personally liable for their decisions. In order to achieve this it suggested that the consignment form should have a section dedicated to the trip time allowed, the distance to be travelled, the average speed expected and rest periods allowed. The Council also urged that fines and penalties must be set at a level that would have real deterrence value, with a similar level and array of penalties applying to clients/customers as those imposed on consigning and transport companies (written submission, Dallas Booth, page 5). The Council also believed that, irrespective of practical and philosophical objections, the issue of low freight rates must be confronted directly because it was a major reason for excessive hours at the wheel and speeding as owner/drivers strove to make a living:

We realise that a minimum freight rate is contrary to competition principles, but mechanisms must be found to ensure the commercial viability of the transport industry if the safety and other standards are to be achieved and road safety is to be improved. Because it is a national industry the setting of freight rates has to become a national issue otherwise it will not work (written submission, Dallas Booth, page 6).

The Inquiry finds considerable merit in a number of these recommendations, including the notion of a trip-based document specifying basic safety-related issues that are related to the commercial practices identified as dangerous in Section 3.

Many submissions stressed the need for increasing the awareness of safety issues for all those parties involved in the freight task (see for example the Victorian Road Transport Association). Again, the Inquiry finds considerable merit in this suggestion, although it would note that, some ignorance on the part of customers appears to be calculated, and clear regulatory requirements backed by even a relatively small number of serious prosecutions will also have a valuable educative effect. Efforts aimed to improve safety in the industry must recognise the influence load owners, consignors and receivers exert in relation to freight rates, scheduling and waiting periods spent waiting to load or unload. Thus far, none of the

collaborative/self-regulatory compliance regimes or voluntary codes address this dimension although, as noted above, the Inquiry understands the ATA has recently held discussions with the ARA on mutually agreed principles. While by no means opposed to these measures, the Inquiry is yet to be convinced that these will achieve a substantial change in industry practice.

Another possibility worthy of consideration was the suggestion by NatRoad CEO David Anderson (oral submission) that the combined effect of the shakeout of trucking operators caused by the introduction of the GST, the need to apply for fuel grants and increasing commercial 'bite' of accreditation would reshape the industry. In particular, he believed it would make entry to the industry more difficult and thereby reduce the funnel effect that depressed freight rates and punished legitimate operators. The Inquiry gave this argument careful thought. It concluded that, on balance, while an industry shakeout was probable, the projected outcome was unlikely (at least at the level suggested) for several reasons. First, while the introduction of the GST into New Zealand caused a major shakeout in the trucking industry, recent evidence indicates it has not eliminated the sorts of practices that compromise safety. Second, the Inquiry received numerous submissions that finance companies were still readily lending money to potential operators to purchase trucks, placing more reliance on 'bricks and mortar' security than business plans. Third, the industry has been through periodic shakeouts before without this leading to any fundamental or long-term solution. The GST and fuel rebate may be new but it is not clear they are of sufficient influence to reshape the industry as suggested. Fourth, no matter how business 'savvy' a small operator is, they generally have little real bargaining power in relation to their clients and occupy a very dependent position if they are part of a subcontracting network, involving a large transport company.

Overall, there is overwhelming agreement that there is an urgent need to set a higher performance standard for both operators and drivers than present regulations require, although there is disagreement over whether this should be achieved by voluntarily accreditation programs (perhaps with incentives) or should be mandated. After carefully weighing the evidence this Inquiry has come to the firm view that only a mandatory system will have the desired effect of setting a baseline of acceptable competencies.

SECTION 6

CO-ORDINATION AND RESOURCING OF REGULATORY BODIES

Another key brief for the inquiry was to investigate whether current regulatory bodies with responsibility for the industry are properly coordinated with each other and sufficiently resourced.

6.1 Coordination

The coordination of regulation affecting safety in the long distance road transport industry can be seen to operate at two distinct though overlapping levels.

First, there is the coordination that occurs between regulators in New South Wales and other jurisdictions. The federal government can and has played an increasingly prominent role in terms of facilitating interstate co-ordination of the long distance trucking industry (through things such as national licensing and registration systems). However, there are other avenues of co-ordination between New South Wales and other jurisdictions on an agency specific basis such as contact between the various WorkCover agencies and also links between senior management of the Motor Accidents Authority and its equivalent body in Victoria and Queensland for instance.

Second, there is the issue of the coordination that occurs amongst different agencies within New South Wales who have a direct responsibility for trucking safety (most obviously the RTA, the NSW Police, WorkCover) or whose responsibilities impinge on this such as the EPA.

6.1.1 National Coordination

Given the growing national framework for regulating road transport, it is impossible to consider the coordination and effectiveness of state agencies without some reference to national coordination. At the national level the federal government has undertaken a series of initiatives to promote a coordinated approach to the long distance trucking industry since the 1980s. A number of submissions to this Inquiry stressed the benefits of a national approach to regulation given the interstate nature of the industry. The ARA, for example, urged that initiatives arising from this Inquiry should be consistent with and complement developments at the national level (written submission ARA p8). Others pointed to ongoing problems and the need to accelerate national consistency:

There are communication problems that exist in the various states in relation to rules and regulations, as there is no National approach. There is currently confusion in regard to the Transitional Fatigue Management Scheme and other fatigue management programs, like the pilot operating Queensland (written submission, Queensland-based transport operator).

It is fair to say that some of the federal initiatives since the 1980s have been welcomed across the board. However, it is also true that there has been a degree of controversy as to whether other reforms have really advanced the cause of safety or have weakened the situation in NSW which historically has maintained a more rigorously enforced road safety regime. In a number of instances it has even been suggested that reforms were driven more by a concern to favour the economic interests of the industry rather than safety.

For example, the Coroner's report on the Cowper incident severely questioned federal moves that resulted in the lifting NSW speed limit on heavy vehicles from 80 kph to 90kph in 1987

and to 100 kph in 1988. The Coroner argued the latter increase was done by the Australian Transport Advisory Council (ATAC) acting on a 1985 report of the Federal Office of Road Safety (FORS) without an accompanying road safety program and with the justification that higher combined speeds in collisions would not alter survival outcomes. The Coroner also queried FORS use of a 1974 USA report that argued a differential speed between cars and trucks encouraged overtaking and head-on collisions. He argued this failed to consider very different US roads (Coroners Court of NSW, 1990:12). An experienced police witness proposed an entirely antithetical view that overtaking was actually easier for cars when trucks were kept to the lower speed although this argument assumes car drivers are not encouraged to overtake in dangerous places by having to slow behind a truck. The Coroner described the outcome of the increased limit as disastrous, with a 31% increase in heavy vehicle-related fatalities on NSW roads in the first 18 months after its introduction in July 1988, and pointing to a similar trend in Western Australia if not elsewhere (Coroners Court of NSW, 1990:8). The Coroner then pointed to a corresponding drop in the fatality rate involving articulated vehicles when the speed limit was dropped following the Clybucca coach smash (where 35 died).

The Coroner openly questioned the need or desirability of uniform traffic laws pointing to evidence that NSW was not only the most populous state with the busiest roads but had a disproportionately high number road accidents (including fatalities) which warranted a more vigorous regime to discipline drivers. He also pointed to RTA evidence that between 1987 and 1988 the proportion of heavy vehicles exceeding 110kph increased from 14% to 22% in NSW compared to an increase from 6% to 9% across the rest of Australia (Coroners Court of NSW, 1990:13). Finally, in addressing claims that inconsistent speed laws were inconvenient the Coroner asserted:

As an unabashed Federalist, I do not agree with the slogans. If the road and traffic conditions vary substantially from one State to another, I can see nothing wrong with the State passing its own laws to meet those varying conditions. As I pointed out during the hearing, it was NSW which had the huge increases in fatalities when the speed limit went to 100 k/h, and it was NSW which in 1989 experienced the two greatest road catastrophes in Australian history. The fact that NSW imposes its own and different laws to regulate traffic and reduce the road slaughter seems to me to be a most proper and appropriate approach to those NSW problems (Coroners Court of NSW, 1990:12).

The Coroner also raised some concerns as to the role of the Australian Transport Advisory Council in relation to driving hours and several other issues, which he believed smacked of being too ready to serve the economic interests of the trucking industry:

A matter of some consternation in myself as an ordinary car driver was the revelation that the ATAC had actually recommended that the daily time permitted for semi trailer drivers be increased to 15 hours. With the greatest of respect, this decision seemed consonant with other determinations of this august body, and which seem aimed at pleasing the trucking industry (others being increases in truck sizes and speeds) rather than concentrating on road safety. One can imagine that if any employer demanded of his workforce that they work 15 hours per day, in any field, the result would be uproar (Coroners Court of NSW, 1990:31).

At the same time, it should be noted that the Coroner still believed a collaborative federal/state approach was vital in relation to other areas such as roadways and licensing (Coroners Court of NSW 1990:59). He reported that amongst parties giving evidence to the inquiry there was near unanimous support for a national licensing system with medical checkups and driver training. This was in response to, amongst other things, the practice of drivers holding multiple licenses from different jurisdictions and using this to evade loss of license under the cumulative penalty points system pertaining to traffic offences. A national

driver licensing system was introduced but without the regular medical checkups required by the Department of Transport in the USA.

6.1.1.1 *The Role/Impact of the National Road Transport Commission*

In 1991 an Intergovernmental Agreement on Heavy Vehicles involving the federal government and all states and territories led to the creation of the National Road Transport Commission (NRTC) to develop nationally uniform regulation of road transport. In terms of this uniform approach the NRTC's goals were to improve transport efficiency/reduce administrative costs and to enhance both environmental and road safety in relation to heavy vehicles (ie greater than 4.5 tonnes gross vehicle mass or GVM). Under the Heavy Vehicles Agreement, the NRTC is responsible for heavy vehicle charges; regulations relating to the design, manufacture and operation of heavy vehicles; vehicle registration and driver licensing (written submission, NRTC). As part of this, the NRTC consults with industry associations, community groups and regulatory agencies on national reform proposals. The NRTC reports to the Australian Transport Council, representing all federal, state and territory Transport Ministers who have the power to approve proposed reforms. Once approved, reforms are implemented by individual regulatory agencies with the NRTC undertaking a monitoring role. At the time of the Inquiry the NRTC (which is based in Melbourne) had a staff of 23 and budget of $3.5 million funded by federal, state and territory governments.

There can be no doubt that the NRTC has achieved a historically unparalleled level of national co-ordination of regulation in the long haul road freight industry. Prior to this there had been a series of attempts at national co-ordination since the 1940s, with the most substantial body being the Interstate Commission established in the 1970s (before being ultimately absorbed into the Industry Commission -later re-badged as the Productivity Commission). The achievements of these earlier efforts (though note the Interstate Commission's recommendations on operator licensing) have been over-shadowed by the NRTC. With regard to some areas at least, such as the movement of dangerous goods, implementation has been largely achieved and the beneficial results are widely accepted by state regulators, operators and others. In other areas, such as road rules, there has been substantial implementation of a national framework by the jurisdictions, with considerable agreement mixed with some misgivings on the part of individual regulatory agencies. In yet other areas, most notably mass limit increases, have been subject to more debate amongst jurisdictions due to the infrastructure implications of ensuring bridges can meet the new loads etc (oral submission, Barry Moore, NRTC). Overall, prior to the NRTC, national co-ordination of road freight regulation was a vexed issue to say the least and the difficult task the Commission has faced should not be under-estimated.

A number of submissions referred positively to the role of the NRTC in furthering co-ordination of safety developments in the road transport industry, citing examples including the FMP which has brought greater involvement of OHS experts in the industry (oral submission, Robert Hogan, federal Department of Transport and Regional Services). The ATA also strongly endorsed the NRTC's success in working towards a more consistent national regulatory framework (oral submission, Mike Edmonds, ATA). The ATA argued that this national approach would have achieved even more had there been greater contact and collaboration between the regulatory agencies of various states:

Regulation is a big issue and getting a nationally consistent regulatory environment is a real problem the industry's faced for a long time. We have gone a way forward with the NRTC but there are still walls in the road between the states. We need that flow a lot better. Some of the other legislation, areas like the three strikes and your out and the speeding legislation, it's there and it just doesn't focus on the driver, it focuses on the owner and the operator as well, which we believe is the key. But unfortunately we also believe that the states don't talk to each other in a regulatory sense and therefore this whole legislation is actually falling down in

some ways… Chain of responsibility legislation is another regulation that has been put in, enacted through the states…Now this is the clincher, this is the one that can help solve a lot of problems but it's a toothless tiger at this stage. It actually brings accountability right through the supply chain, through the driver, operator, middle manager, customer, consignor of freight…we believe it is an answer but unfortunately its not being used and really these things need to be recognised and pushed (oral submission, Mike Edmonds ATA).

From its own investigation, this Inquiry would endorse the ATA's assessment about problems of regulatory contact between the jurisdictions although this is not the only impediment to a more effective national regulatory framework (see below).

Strong though sometime implicit support for the NRTC and the critical role it has played in moving towards a more consistent regulatory framework came from other parties. For example, in both its written and oral submission (Bill Healey), the ARA stressed the need for a consistent national reform agenda and identified the NRTC as the logical focal point for this. The ARA urged that this Inquiry should try to ensure its own recommendations were compatible with the national framework, including the national code currently under consideration. The ARA expressed the understandable concerns of body representing, amongst others, retailers whose operations extended across a number of jurisdictions if not nationally that they should not have different sets of rules relating to road transport.

We acknowledge that there is an issue of driver safety that's being addressed at both state and national level. We would think that given the role of the National [Road] Transport Commission that whatever comes out of this Inquiry clearly has to be integrated with the national approach and we're involved on the periphery…at moves at Commonwealth level to address this situation (oral submission, Bill Healey, ARA).

At the same time, during its investigation the Inquiry heard a number of organisations and individuals express misgivings about the extent to which safety had been given sufficient weight in terms of national road transport developments in the 1990s, including the role of the National Road Transport Commission. A number of submissions strongly supported the role the NRTC was trying to perform, lauded a number of its achievements, but expressed some concerns about the information used to make key decisions.

I think the NRTC has done a great job in getting some of the issues on the agenda but, once again, I think they have been poorly advised on certain areas… There are a lot of interested parties that have lobbied for politically acceptable regulation…associations, there's a lot people who lobby the NRTC, even truck operators direct…I don't think they've had a cohesive argument put to them about how the industry should be regulated… I think they've got some good people but they're only as good as the advice they get and the NRTC will openly admit that (oral submission, Dean Croke).

Other criticism was more pointed. Associate Professor Philip Laird from the University of Wollongong, who had spent the last 17 years researching land transport issues in Australia and overseas, (oral submission) believed the NRTC reforms had continued a longer term trend of compromising safety to commercial considerations and argued:

My overall impression is that there has been a contest between increasing productivity on the one hand and to assist international competitiveness and exporters, particularly rural exporters, to compete on world markets and safety and competitive neutrality on the other hand. And I think the safety and the competitive neutrality have come off far behind the push to increase the productivity through the move in the 1980s to increase legal speed limits and to increase mass limits and to increase dimension limits. And the push for productivity and competitiveness within the industry I think has been at the expense of long term safety issues… In the 1980s the National Road Freight Industry Inquiry produced a report in 1984

with a package of 98 recommendations which were a balance between safety, an improved operating environment and a better deal for the trucking industry which was then showing signs of over-capacity, particularly in the areas of owner/drivers. The federal government drove the reform agenda. At the end of the day we saw the mass limits for trucks increased. At the start of that process the legal gross vehicle mass for a six axle articulated truck was 38 tonnes …and the GVM for a six-axle semi was lifted in two stages to 42.5 tonnes. The legal speed limit was lifted in two tranches from 80 to 90 to 100 kph but the compensatory safety measures of operator licensing, which had also been recommended by McDonnell in the NSW inquiry of 1980, and tachographs, which had also been noted by McDonnell, were not implemented… These productivity imperatives, this competitiveness pushes safety and competitive neutrality down and we really need a better balance between road freight productivity, truck safety and competitive neutrality … Its (the 1990s) a replay of the 1980s… I think they (the NRTC) have, let me choose my words carefully, been all but hijacked by the industry…its a classic case of industry capture at a very early stage and at the highest level.

It is important to observe that this opinion was by no means typical of those enunciated in relation to the role of the NRTC. At the same time, claims that the NRTC had failed to balance commercial/productivity and safety issues were made on more than a few occasions.

Another to raise some concerns was the NRMA. As a motorist organisation, the NRMA has taken a keen interest in the long haul trucking safety, and the regulations governing this, over many years. It was involved in the process developing regulations, which now constitute the Road Transport Reform (Truck Driving Hours) Regulations. In relation to the latter, the NRMA commented on each set of draft regulations and regulatory impact statements prepared from 1996 until the implementation of the regulations in 1999. However, while supporting the development and implementation of a national approach the NRMA did raise some concerns;

In 1996, NRMA lobbied the NSW and Federal governments regarding the number of hours drivers were allowed to drive and work each day. At the time work being done by the National Road Transport Commission (NRTC) was suggesting 18 hours of driving per working day as the maximum for drivers. NRMA strongly opposed these hours and called for a significant reduction in the time allowed to be worked in any 24 hour period. This stance was supported by surveys which showed that the community regarded 9 hours a day driving and working as being an acceptable maximum. More than 70% of the respondents to NRMA's survey either disagreed or strongly disagreed with the proposed 18 hours per day regime being suggested at the time. The eventual outcome of 12 hours under the regulated hours regime to 14 hours under the Transitional Fatigue Management Scheme was an acceptable compromise given the emphasis on fatigue management involved (written submission NRMA).

What disturbed the NRMA, and this point was reinforced in evidence given to the hearings, was not the final outcome but the initial proposal – a proposal it viewed with alarm, especially as it emanated from a body, one of whose central objects was to promote safety in the industry. There is another side to this issue that perhaps reinforces the subsidiary nature of safety concerns in terms of national regulatory developments. At no point, as far as this Report can determine, was the issue of whether a substantial reduction in the maximum working hours of long distance truck drivers would substantially improve safety performance in the industry ever seriously considered. Yet, evidence presented in this Report as well as other research provides ample ground for raising this question. That the question was never seriously raised says something about the framework in which the reform agenda has been operating.

The question of driving hours was by no means the only issue where concerns were raised in connection with national regulatory developments affecting the long distance trucking industry. As noted in an earlier section, both the RTA and the Traffic Services Branch of the NSW Police Service raised concerns about the difficulty of implementing sanctions in relation

to speeding and other breaches by federally registered vehicles. Reference was also made in an earlier section of the Report to problems the NSW Police Service had identified in connection with the enforcement of the new National Load Restraint Guide.

In the course of its investigation, the Inquiry gained the clear impression that, left to its own devices, NSW is likely to have adopted a tougher and more restrictive regulatory regime than that agreed to at national level. Of the spectrum of regulatory approaches found in Australia, NSW has a long established reputation as being the most punitive/regularity orientated. New South Wales is the only jurisdiction to go down the high technology enforcement path (with Safe-T-Cam) and according to Barry Moore from the NRTC (oral submission) account for about half the national heavy vehicle enforcement budget. Some of those favouring a more collaborative approach argued that NSW was out of step while others commenting on this issue, suggested there were reasons beyond history for the NSW approach (including its greater population/vehicle density, topography and place as a hub of most interstate transport). Whatever its origins, it does appear that the national framework has entailed concessions from NSW (whether these are comparatively greater than those of other jurisdictions is a moot point) which some regulators had misgivings about.

The Traffic Services Branch of the NSW Police Service raised a number of further issues about national developments in its submission relating to ease of enforcement, vehicle configuration and load restraint.

...over the past several years NSW has been involved in the implementation of new Road Transport Legislation, with the culmination of that process being the introduction of the Australian Road Rules on the 1st December 1999. As with any new system that replaces a system that has been in place for some 90 years there is a certain amount of confusion. One difficulty with the current legislation is that a police officer may be dealing with an offence that resides in two, three or four volumes of separate legislation. The ability of police to be able to go to one reference point and glean the required information has gone.

The Police Service is concerned that there seems to be a certain amount of legislative creep starting to emerge. One area where this seems to be occurring is in the area of heavy vehicle dimensions. An example of this is the lengths of B Double configured vehicles. We have seen the length of these increase from 19 metres to 23 metres then to 25 metres and now certain areas of the industry are looking to extend this to 27 metres. The basis of these requests are made upon in the main economic reasons. Police consider these issues from two perspectives one being road safety the other traffic management.

Police concerns resolve around the notion that the longer you make a vehicle, the longer that it will take you to overtake that particular vehicle. This can start to impact on the safety of the vehicle overtaking and other road safety areas. Additionally the manoeuvrability of the vehicle themselves can create difficulties for police. If the [vehicle] is involved in a crash Police have the difficulty of obtaining specialised recovery vehicles. If a break down occurs, site safety of the vehicle can emerge as [an] issue both from road safety as well as traffic management. This issue is particularly relevant in urban areas. Our road network is operating in many areas at maximum capacity.

Some organisations both within and outside the industry argue that by increasing vehicle dimensions size you can actually reduce the number of vehicles on the road. That may well be the case, however the decrease in volume appears to be minuscule. The problems that the sheer size of these vehicles create from a road safety and traffic management perspective outweighs any perceived decrease in volumes.

It should be noted that the latter observation on the gains in relation to larger vehicles echoes observations made by the 1996 New Zealand Inquiry into truck crashes discussed earlier in

this Report as well as concerns and research examined in the discussion of vehicle configuration in Section 2.

For its part, the NRTC is not unaware that the national framework has involved compromises for NSW but argues these need weighed up against the extension of regulatory reach that the national framework has provided (oral submission, Barry Moore, NRTC). This is, in the view of the Inquiry, a very valid point – though one that needs to be assessed in terms of specific (including the FIRS problem, which is hardly an endorsement of extended reach) as well as overall outcomes. The NRTC (oral submission, Barry Moore) stressed the very supportive and co-operative approach of NSW to adopting and enforcing regulation in keeping with the national framework. The NRTC also recognised the need to consider differences in topography/road conditions in relation to some standards. However, the Commission argued these issues (such as length and mass) were a very small subset of the total regulatory package and tailored solutions (perhaps, given intra-state variations, better based on zones or designated routes than state boundaries) could be worked through with the jurisdictions. Again, the Inquiry accepts that the move to national framework involves difficult judgements and the NRTC at least provides a basis for investigating/negotiating these issues.

During the course of its own investigations the Inquiry obtained evidence which is at least perplexing. The NRTC was able to cite productivity improvements associated with the introduction of B-Doubles and extra mass on vehicles, arguing this had been fairly well researched. However, when asked whether it had undertaken any bench-marking or detailed assessment of the reasons for the apparent improvement in heavy vehicle safety since the late 1980s NRTC representatives indicated that 'the whole compliance area had been dreadfully under-researched and we really don't know very much about it.' (oral submission, Barry Moore, NRTC). When asked if they had safety experts able to undertake such research the NRTC response was they had the staff but not the budget to do it but relied on the Australian Transport Safety Bureau (ATSB) who had done a fair bit. As shown in Section Two of this Report, the Inquiry undertook its own research on safety performance in long haul road transport, drawing on the RTA, ATSB and other sources (including a driver survey). After doing this, it became apparent that the picture was far less 'rosy' than the one often suggested to it by some parties in the course of the Inquiry. Much of the purported improvement in indicators derived from official data sets had stalled by the early 1990s (or with regard to some by the mid 1990s at the latest), and comparisons with the safety performance of 'other vehicles' or heavy trucks in other countries remained unfavourable. The driver survey and other sources revealed a series of problems, including high-range GHQ scores on the Hume highway and for those drivers paid under an incentive system (a result confirmed by other survey evidence). Questions about the precise origins of those improvements that have occurred remain to be answered. The effort put in to obtaining accurate measures of productivity outcomes from the national reform process has simply not been matched by a similar emphasis on investigating changes in safety performance and the reasons for this, including the impact on safety outcomes of NRTC-sponsored changes.

The NRTC stated it was getting some work done on compliance trends (using Culway data) at the moment with funding from both ATSB and AustRoads but that at present compliance information was not collated nationally although they were trying to get it done. The NRTC conceded that this activity should have been undertaken years before. The NRTC also conceded there was no national enforcement picture but that they were getting that work done by a an economics consultant funded by ATSB to identify the available data and how it can be brought together (oral submission, Barry Moore). The Inquiry was a little disturbed, to say the least, that the NRTC had not used OHS or safety enforcement experts in this exercise, given the need to make informed judgements about reliability of the data (reporting problems etc) and what it will show in terms of enforcement issues. Such judgements are a necessary precursor to any decision about usable data sets and, with all due respect to the consultant employed, require background knowledge and expertise on safety and enforcement issues as

much as data identification abilities (though these too can depend on background knowledge) and statistical techniques. For example, as this Report has already shown, workers' compensation data sets are readily available but there are serious limitations in terms of using them to measure the incidence of work-related death and injury in the road transport industry. As a second example, when the federal Department of Health and Aged Care recently prepared a report on available data sets on occupational disease, it used a panel of experts to assist the consultants (who had expertise in any case) identify both potential data sets and their strengths and weaknesses. In responding to this, the NRTC noted they had held discussion with the Australian Institute of Criminology and Professor Neil Gunningham from the Australian National University (an expert on OHS enforcement) and suggested they saw the inputs just identified as the second stage of the process. The Inquiry accepts the first part of this response but disagrees with the latter, since it believes knowledge of the field affects the capacity to identify relevant data sources. As the Inquiry has not viewed the discussion paper arising from the project it will make no further comment.

The Inquiry was disturbed by the seemingly sporadic contact between the NRTC and the National Occupational Health and Safety Commission (NOHSC). The NOHSC has been carrying out research on long haul road transport for around a decade and it would also have been a useful contact point in terms of identifying persons with expertise to on regulatory enforcement who could have acted as consultants. The NRTC has supported (managing with ATSB support) the research of Dr Ann Williamson (ex NOHSC now with the University of New South Wales) and colleagues to update a large survey of fatigue amongst long haul truck drivers. This is a welcome measure, given Williamson's demonstrable OHS expertise and the way this research links to the NRTC's interest in fatigue management (and push for regulatory reform in this area). The Williamson et al survey has a number of valuable findings that are included in this Report. A follow-up operator survey has also been undertaken. The Inquiry has not viewed the operator survey but can appreciate the NRTC's hope that the results of this may prove to be especially important.

Notwithstanding these recent welcome initiatives by the NRTC, it is hard to escape the conclusion that safety concerns have not attracted the same degree of attention as economic and productivity improvements. At the very least, the research on safety performance that should have formed an essential part of assessing the reform process is conspicuously absent. Since its creation, the NRTC has produced a series of papers on safety-related reforms but closely examining several of these did not allay this Inquiry's concerns.

In 1993 the NRTC issued a discussion paper on options for improving driver performance. An appendix attached to this paper reviewed the evidence of five surveys of drivers carried out between 1984 and 1992, a number of which (like that of Hensher) have already been referred to in this Report. With due acknowledgement about treating their findings cautiously, the review concluded:

The surveys indicate that there are occurrences of potentially unsafe practices or poor performance in the long-distance component of the road freight industry…The practices appear to be caused, in part, by the market power exerted by freight forwarders, agents, consignors of freight and some (smaller) transport companies. This market power can be exerted because the low barriers to entry and the structure of the industry make long distance trucking highly competitive.

Without changes to the structure of the industry, it may not be possible to improve on-road performance to a great extent. The Hensher survey and subsequent analysis suggested that economic rewards were the major cause of poor on-road performance in the long-distance road freight industry. Moves to change the structure of the industry would be outside the current responsibilities of the National Road Transport Commission if they amount to Economic Regulation. Further, the recent Bureau of Industry Economics international

benchmarking study reported favourably on the efficiency of the Australian road freight industry.

The survey results on speeding behaviour lend some support to setting realistic regulations as a means of improving on-road behaviour. Such regulations would also require adequate enforcement practices which appear to lack much effectiveness at the current time (NRTC, 1993, Appendix page 10).

The first five sentences of this quote affirm points made repeatedly during the course of this Inquiry although they do beg the question as to why these issues were not pursued at that time. The discussion paper itself canvasses a number of options including operator licensing and self-regulated accreditation. It notes that evidence on the effectiveness of operator licensing is limited and that self-regulation schemes may have the capacity to alter customer relationships due to more favourable customer perceptions of firms that have received accreditation and the effective sanction that exclusion from accreditation implies. This Inquiry is unaware of attempts to test either option in a detailed fashion (and evidence presented to it certainly casts doubt on presumptions central to the latter). It is, however, the tone of the last few sentences which are rather disturbing since they imply that the NRTC's brief does not extend to those regulations that might be required to improve safety, especially as the present structure of the industry is efficient. The reference to more realistic (ie higher) speed limits is offset with suitable references to the need for appropriate regulation. Nonetheless, the overall balance of the last part of the quote is not indicative of a view that economic efficiency and safety have equal priority.

This concern was not allayed by other documents reviewed by the Inquiry. A year later, the Chairman of the NRTC, John Hurlstone addressed the 17th ARRB Conference on the subject of reform in road cost recovery, charging regimes and operational compliance. Out of a 12 page paper just under two pages are devoted to compliance and most of this to promoting the idea of voluntary alternative compliance regimes. In the discussion Hurlstone (1994:71) notes that operator compliance and safety performance appears to be poor, especially in the long haul sector and then adds:

Improving compliance is not costless. The benefits of an improvement in on-road performance must outweigh any increase in compliance costs to both operators and regulators.

Hurlstone then argues compliance will be better if standards are set at a 'realistic' level, the level of enforcement is so high that chances of avoidance are low, the penalties are high and strategies are directed at those who bear the responsibility rather than those who are easiest to detect. He further argues for an array of sanctions and a mix of sanctions and incentives, before proceeding to discuss the key role alternative compliance will play in the future national regulatory framework. While the Inquiry would accept many of the points made, the analysis begs some critical questions. How are the costs and benefits of compliance measures to be calculated? As far as the Inquiry can determine no measures were undertaken by the NRTC in what was a central point. It might be expected that the NRTC would have at least sought to collate information on the full costs of poor OHS performance in the trucking industry as well as commissioning or encouraging research assessing the value of various compliance measures, including alternative compliance schemes. How else do you judge whether the shift to alternative compliance is justified? As far as the Inquiry is aware no such research has been undertaken or if it was it was never made available to the Inquiry which would be surprising as it was central to its terms of reference. As noted earlier a number of former RTA and Police officers, amongst others, expressed concern that there had been no evaluation of the shift to alternative compliance measures.

Perhaps the single most important recent initiative of the NRTC, and one where the overarching importance of the safety objective cannot be questioned, has been the development of Chain of Responsibility. This is an important development which, as several submissions noted, had the potential to address some of the commercial pressures contributing to unsafe driving practices by targeting those responsible for initiating these pressures without due regard to their safety implications. Yet as indicated in the section on Enforcement, along with a number of other NRTC initiatives, inadequate attention appears to have been given to the practical steps needed to make these remedies workable or enforceable, at least to the extent that they might exact a significant change in behaviour. It could be claimed, with some justification, that it takes time to move from an entirely prescriptive approach to regulation to one that introduces the concept of performance standards and does so to a wider array of parties than was the case in the past. It should be noted in passing that the third heavy vehicle reform package picks up this issue, with a section devoted to the training of enforcement staff to affect a 'cultural' shift. It again struck the Inquiry that this long overdue measure was at an early stage of development. It could also be claimed that the full scope of Chain of Responsibility measures are still being introduced and will take time for the momentum of prosecutions and publicity to reach a point where change can be seen to occur.

What these arguments fail to explain is why it took the road transport industry, and the agency with a key responsibility for safety, so long to develop and implement regulatory concepts that had wide currency in the areas of occupational health and safety and environmental laws for around 20 years. It also fails to explain why, in comparison to OHS legislation not to mention community expectations, the Chain of Responsibility provisions still lag well behind in terms of the scope/coverage of performance standards established and the penalties that apply for offences.

When these observations combined with the limited number of prosecutions, there is an inescapable conclusion that, even factoring in increases in fines and the number of prosecutions, Chain of Responsibility provisions are unlikely to have a very significant impact within the foreseeable future (say five years). Without a substantial upgrading of fines and more than few serious prosecutions the prospects are even less positive. Indeed, there is a real risk Chain of Responsibility could become yet another ineffective and largely symbolic attempt at improving safety in the industry. Even under the most optimistic scenario this Report is forced to conclude that while Chain of Responsibility represents a step in the right direction but is too belated and partial to meet the urgent safety problems being experienced by the road transport industry.

It appears the NRTC is itself partly aware of this problem, recently arranging a focus group of key stakeholders to consider a national agreement on a code of practice for the health and safety of heavy vehicle drivers. WorkCover Victoria, which attended the focus group, indicated that it supported this approach but added important riders that the code would require endorsement under legislative provisions for both road transport and OHS, the code should highlight responsibility, be linked to penalties and create a level playing field (written submission). In other words, this code was not a voluntary one but was to link into both road transport and OHS legislation (the Inquiry has already indicated its strong support for a regulatory regime in long haul trucking based on both road transport and OHS legislation). Victorian WorkCover believed the involvement of industry would build ownership of the code and, for the same reason, argued that suppliers and customers also be involved in its development. Overall, WorkCover believed there was potential for a significant improvement in the co-ordination of jurisdictions in terms of information sharing and better integration of initiatives. At the same time, WorkCover expressed a desire to contribute to the development and implementation of any national strategy that might result from this Inquiry.

The involvement of agencies like Victorian WorkCover in discussions of national strategies on improving safety in the long haul trucking industry is a welcome development. It is the view of this Inquiry that had such collaboration with OHS agencies, including the National Occupational Health and Safety Commission, occurred at an earlier stage then the development of a more effective regulatory approach would have been accelerated. The last observation raises a perplexing point. Since the early 1990s NOHSC had funded or sponsored a series of major research projects in the long distance trucking industry and in 1997 it evaluated a number of prevention initiatives in various federal, state and state jurisdictions (including the NRTC's FMP pilot). This work was continued for another year under the title of *OHS in Road Transport* (NOHSC, 1999:6). As part of the latter, NOHSC ran a national workshop that brought together nearly all state and territory OHS agencies with a number of road industry players. A major outcome of this workshop was the recommendation for the development of a national framework for OHS in the road freight industry be '…developed by the industry, facilitated by a national body and with the involvement of the OHS agencies' (NOHSC, 1999:8). A prime reason underpinning this was the recognition of the problems posed by 'workplaces' that could move across jurisdiction boundaries and the need for a more coordinated regulatory approach. The obvious question to arise from this is why the NRTC and NOHSC did not collaborate more and at an earlier time. At a number of points, the Inquiry was struck by a degree of insularity in terms of the road safety debate, which denied access to useful lessons from not simply an adjacent area but one that directly overlapped. A number of state and federal agencies, not simply the NRTC, undoubtedly helped to perpetuate this until recent times. At the same time, Victoria and Western Australia, if not other jurisdictions, have provided a lead in relation to a new approach involving collaboration between OHS and road transport agencies. All the evidence available to the Inquiry suggests this is a general approach that should be pursued more vigorously in the future.

How the latter is to be best achieved at the national level is a serious question, but one beyond the terms of reference of this Inquiry. All the Inquiry will do is observe that a number of submissions, such as that WorkCover NSW and the ATA expressed the view that the NRTC was the logical coordinating agency for future developments in terms of a national approach for safety in the road transport industry. One the other hand, others including the TWU, academics and (and some agencies cited above) expressed reservations about the NRTC's past performance if not openly questioning its credibility to drive a new agenda that might include a code of practice on safety. Divided opinion is to be expected, but equally broadly based credibility will be essential to effectively introducing such a code.

6.1.1.2 *Other Mechanisms for Achieving Consistency/Cooperation between Jurisdictions*

It should be noted that the NRTC is by no means the only conduit for coordinating the regulation of long haul road transport across jurisdictions. Aside from regular informal contact between agency chiefs there are periodic coordinated enforcement campaigns such as the recent Aust-Trans operation involving South Australia, Victorian, Queensland and New South Wales. Further, at a recent meeting of road transport regulatory bodies from a number of jurisdictions held in Sydney, Queensland proposed the establishment of a new coordinating body, the Interstate Compliance Consultative Groups (ICCG). In its submission, Queensland Transport (written submission, page 23) stated that a meeting of the ICCG proposed for November 2000 would seek to achieve '…integration, co-ordination and co-operation between State Transport Authorities, State Police and relevant statutory authorities.' The proposed objectives include:

- optimising economies and efficiencies in enforcement of heavy vehicle operations;
- enhancing information exchange to standardise operations in each state
- provide specialist input into legislative processes relating to the management and enforcement of interstate heavy vehicle operations;

- identifying and planning for the introduction of new heavy vehicle interstate operations;
- fostering a 'whole of government' approach to heavy vehicle enforcement operations;
- encouraging industry debate and participation in interstate heavy vehicle enforcement; and
- developing a proactive strategic approach to the introduction of new heavy vehicle technology
  (written submission, Queensland Transport, pages 23-24).

While it is to early to make a definitive judgement, the formation of the ICCG appears to be a very worthwhile venture especially if the 'whole of government' approach includes bringing OHS agencies into the loop. Quite apart from the remedies available under OHS legislation, these agencies have considerable experience in implementing and enforcing 'general duty' provisions and performance standards - measures that road transport authorities have begun to implement after a long period of relying on prescriptive legislation. The input of OHS agencies is likely to accelerate the development of the new enforcement regime as well as providing a new set of remedies, especially suited to the most serious cases of systematic breaches by a range of parties.

6.1.1.3 *Areas for future Improvements in Co-ordination*

The Inquiry heard evidence on a number of areas where co-ordination would lead to more effective enforcement. One example raised earlier were inter-jurisdictional disparities in the level of stamp duty payable for transferring truck registration and especially the absence of this payment from the FIRS scheme, creating a loophole that could be exploited by an unscrupulous operator.

The Insurance Council of Australia (written submission, Dallas Booth, page 9) suggested that jurisdictional differences in relation to CTP coverage on large trailers (ie more than 4 tonnes) also created a problem. In NSW the Prime Mover bears the full cost of CTP and trailers are not required to have CTP insurance. The Council argued this meant that freight forwarders or transport companies who owned their own trailers and used subcontractors with prime movers do not incur any CTP cost 'despite being a potential contributing factor to the accident rate.' It was noted that the Heads of CTP Schemes were discussing uniformity for all circumstances/combinations (eg a Victorian prime mover towing a NSW trailer) – a move supported by the Council. Council suggested a potential solution was to charge CTP on commercially used trailers (carefully defined by type and experience rated) which it argued would have the effect of involving consignors and transport companies in the CTP scheme and thereby strengthening the link between safety performance and insurance costs. The Council stressed this would have to been done in a uniform manner nationally to prevent trailers being registered in jurisdictions with lower requirements. The Inquiry was unable to evaluate the full merits of this proposal but it probably warrants closer investigation. Certainly, present arrangements provide a financial incentive to use subcontracting arrangements to evade adverse safety outcomes and this should be addressed.

6.1.1.4 *Conclusion*

A note of caution needs to be sounded with regard to the purported advantaged accruing to national coordination. There is an argument to be made that, thus far, the benefits of national coordination have largely been economic gains to users of long haul road transport and the safety gains to the transport industry and other road users have been at best mixed and far from unambiguous. The move to federally registered vehicles is a case in point. As noted earlier in this Report evidence from the RTA using Culway indicates a far higher incidence of speeding amongst federally registered trucks compared to those registered in NSW. There is also evidence to suggest this is not a recent phenomenon (see Hensher and Battellino,

1990:552). The Inquiry has also referred to other coordination problems that, at best, have not been resolved by the national framework. For example, the push towards alternative compliance regimes, such as those in the area of driving hours/fatigue management has resulted in some confusion amongst regulatory agencies. As one operator observed:

There are communication problems that exist in the various states in relation to rules and regulations, as there is no National approach. There is currently confusion in regard to the (Transitional Fatigue management scheme) and other fatigue management programs, like the Pilot operating in Queensland (written submission, Queensland operator).

6.1.2 Coordination amongst regulatory agencies in New South Wales

Other sections of this Report have provided considerable evidence on an array of co-ordination problems that presently exist in relation to the regulation of the long distance trucking industry. Virtually all parties making submissions agreed this was a critical problem requiring urgent attention. Therefore, it is not intended to repeat these problems in detail. A few examples are worth mentioning simply to reiterate the point. For instance, the Inquiry spent considerable space on the ambiguous and often informal relationship between the NSW Police, the RTA and WorkCover. This results in crucial issues being unresolved such as how does WorkCover and the RTA allocate responsibility for inspection of long haul operator workshops and depots? How should information be shared amongst the three agencies (and note here the case of Victoria where the coroner has been drawn into the loop)? When should a serious on-road incident be reported to WorkCover and how should this process occur? Precisely when should action be pursued under OHS legislation rather than road transport legislation? One consequence of the failure to explicitly address these questions have been what appear to be significant gaps in regulatory coverage in areas like workshop/depot inspection and serious on-road incidents. In other sections of this Report, reference has been to specific incidents, one involving the dismissal of a driver (allegedly at the behest of the client) for refusing to work illegal hours where despite pressure from the TWU an investigation was not carried out by either WorkCover or the RTA. Quite apart from all the parties already mentioned who supported WorkCover investigating serious on-road incidents, a number of transport operators, both small and large, expressed concern at what they saw as the ambiguous situation in relation to investigating these incidents. Indeed, the views on this issue were overwhelming, with unanimity amongst industry associations and the union. As one ATA council member (oral submission) observed:

There's one question that gets asked in the industry is that if an incident, an accident, occurs on a building site then OH&S is there. We are out on the road. That is our worksite so therefore if there's an incident …why doesn't OH&S investigate.

Similarly, David Anderson, CEO of NatRoad (oral submission) pointed to the inconsistency whereby WorkCover would rapidly attend a serious incident at the depot of a transport company but not an on-road incident even though that a driver was in their workplace, namely a truck.

What may appear surprising is the number of times the Inquiry was told by operators and industry associations that there was strong support for taking prosecutions against operators and others who flouted safety and that use of the OHS legislation had support precisely because of the more serious penalties available. The Inquiry noted a deep sense of frustration amongst those within the industry committed to improving safety performance that more was not being done to target those who besmirched the industry's reputation.

One result of the lack of co-ordination is that while deaths of long distance truck drivers in highway crashes represents a significant proportion of total work-related fatalities in NSW, the Inquiry is unaware of a single case where there has been an investigation to

determine whether the transport operator, client or other party could be held criminally liable. In this regard, truck drivers have not been afforded the protection that other workers receive and they are entitled to under the NSW Occupational Health and Safety Act. As numerous submissions to this Inquiry have made clear, this is a situation that many within the industry, the union and at least some of those involved in enforcement (including highway police) cannot understand or accept. It is a situation this Inquiry also finds to be unacceptable and needs to be addressed as a matter of urgency.

The Inquiry was made aware of at least one attempt at formalising co-operation between different regulatory agencies in NSW but when it sought further information on this activity (ie records of meetings held) these attempts appeared largely dormant.

The Roads and Traffic Authority (RTA) has wide ranging responsibilities for managing vehicles and their use on NSW roads. The management of heavy vehicle traffic constitutes just one element of these broad responsibilities. Even in connection to heavy vehicles the RTA undertakes an array of tasks, by no means all of which relate directly to safety (although all at least impinge on it). In its submission the RTA identified these activities as:

- Enhancing the safe operation of heavy vehicles while ensuring 'industry productivity is not unduly constrained';
- Assisting the industry improve productivity by approving more productive vehicle configurations and managing route access of these vehicles so safety is not compromised;
- Protecting the road network from excessive damage due to overloaded vehicles;
- Manage access of heavy vehicles to the road system in consultation with stakeholders;
- Provide new roads and maintain existing roads and 'manage the efficient and safe movement of heavy vehicles through the use of leading edge traffic management practice and technology.' This includes the provision of rest stops;
- Protect the environment from heavy vehicle noise and emissions;
- Charge operators for the use of the road;
- Participate in the National Road Reform process led by the NRTC (written submission RTA page 2).

In early 2000 the RTA undertook a restructure of its corporate road safety and road user policy functions, with the Road Safety Branch being merged with the Driver and Vehicle Policy and Regulation Directorate to form the Road Safety and Road User Management Directorate. A Heavy Vehicle Section was established within the new Directorate to provide greater accountability by bringing all aspects of heavy vehicle safety together. The Heavy Vehicle Section is responsible for policies relating to heavy vehicle speed and fatigue, standards for truck and rest stops, heavy vehicle fleet safety, load restraints, drug use by drivers, driver health, driver licensing and vehicle design/construction, service and inspection. Beyond these specific areas, the Section has an overarching responsibility to direct safety strategy, including the implementation of specific initiatives and representing/acting as a contact point for the RTA in terms of heavy vehicle strategy, policy and standards (written submission, RTA page 3).

In addition to these changes the section responsible for developing compliance strategy, primarily for heavy vehicles and drivers, has been elevated to a branch, now known as the Compliance Strategy Branch, within the Road Safety and Road User Directorate. In its submission, the RTA stated that the branch would work with the Heavy Vehicle Section to ensure RTA compliance activity has a strong safety focus.

It is too early to judge the impact of this restructuring although it appears to be a move in the right direction and the Inquiry was impressed with the knowledge of members of this Section who gave evidence to the Inquiry and also provided detailed information on request. Indeed,

given the breadth of the RTA's responsibilities and the well-publicised problems of long distance over the past decade or more the Inquiry was a little surprised this measure had not been introduced some years before. There is also the obvious question as to why, if heavy vehicle safety is so important, the Heavy Vehicle Section did not warrant full branch status (including direct control of relevant compliance strategies)? The Inquiry was also surprised by the Transport Workers' Union's claim that it had not been notified of the establishment of the Heavy Vehicle Section (oral submission, Tony Sheldon, secretary NSW Branch of the TWU). As the Inquiry did not put these questions to the RTA it cannot pursue the issue further. However, the more general points just made remain valid in the context of the issues being addressed in this section.

The key coordination point for the RTA at present is the NSW Police Service that undertakes a critical role in terms of on-road enforcement. This is a critical relationship both at both the level of determining compliance strategies as well as at the operational level of particular regions (and especially those covering major transport routes). Evidence obtained by the Inquiry indicated that, as might be hoped, there is a level of cooperation and shared vision between the RTA and the Police at both levels. This included coordinated campaigns with other jurisdictions such as the recent Aust-Trans operation involving Queensland, New South Wales, South Australia and Victoria.

Nevertheless, during the course of the Inquiry a widespread view emerged that the existing level of coordination amongst the various agencies responsible for trucking safety was inadequate and needed to be improved.

In its submission NRMA argued:

Currently, the bodies with the main responsibility for regulation are the Roads and Traffic Authority (RTA) and the NSW Police, with the RTA having the lead role. It is understood that these organisations do not have any formal arrangement or agreement regarding their respective roles in enforcing truck driving regulations. This would seem to be a necessary component for effective cooperation (written submission NRMA, p5).

A number of operational police also expressed the view that the relationship between the Police Service, the RTA and WorkCover should be strengthened, perhaps through a dual body. A traffic coordinator (oral submission) expressed the view that had investigation of heavy vehicle smashes been treated as more than traffic accidents the information derived:

would have really highlighted a lot of the problems with the industry and we could have had the solutions in place by now. Unfortunately in this area we have had a number of heavy vehicle accidents where we believe WorkCover should have involved themselves in it… Even two weeks a go we had a motor vehicle accident where a truck turned over on the highway and we had a driver injured. We haven't got the final results of the blood urine tests on that…However, no one has investigated what the driver was doing prior to the accident. Nobody has investigated the time schedule for that driver. Nobody will…approach the company to find out why the driver was at that location at that particular time and…nobody will probably look at the pressures that were on that driver.

Other submissions pointed to what they believed to be unnecessary duplication of procedures due to regulatory overlap. The ATA, for example, pointed to duplication in the area of medical testing of drivers, with drivers having to:

undergo up to three medicals (TruckSafe/Dangerous Goods/Heavy Vehicle) when one would suffice is but one example of bureaucracy not required in the system (written submission, ATA page 5).

One critical aspect of co-ordination is the sharing of information amongst agencies with responsibility for safety in the long distance trucking industry, notably the police, RTA and WorkCover NSW.

A highway patrol officer identified this as a major issue:

Exchange of information between WorkCover, the Police and the RTA would go a long way…we identify things but there are no formal avenues for us to say "look we found this problem and what do you know about it"… Some police have contacts with WorkCover and our own contacts with the RTA where, informally, they do find out information in relation to certain companies and operators which helps to target them. But it's not a formal process and there is some reluctance because given legislation there is only certain information you can provide… We get a lot of information from Safe-T-Cam and what companies breach driving hours and speed limits…we use to target those trucks because they are avoiding Safe-T-Cam or warning letters they get… But there's only so much they can tell us and its only because I know somebody that I can gain access to that.

The issue of sharing information also has resonance in the broader domain. Community and relevant group access to non-sensitive information on safety issues can facilitate a more informed debate and a constructive input from interested parties can reinforce the effectiveness of compliance activities. Several submissions specifically addressed this issue. A written submission from Transformation Management Services Pty Ltd (2000) pointed to the problem of 'diffuse disasters' defined by a 1993 Victorian Law Reform Commission paper as:

…a disaster in which individual incidents lead to a small number of deaths or injuries separated from each other by space or time. If all the calamities occurred at one time, they would be treated as a full-scale disaster. As they are, they are all too often treated as 'incidents'

Pointing to specific examples (like the Mistral fan case) the Law Reform Commission argued the phenomenon was exacerbated by an absence of information to assist preventative action and where the interests of particular parties militated against making such information available. For its part, the submission by Transformation Management Services (2000) noted successful efforts to break this nexus in relation complaints by bank customers and the rehabilitation industry in Victoria. The submission argued road users should have knowledge of the OHS performance of transport operators. Clients using particular operators should understand this choice and its implications (including safety) is open to scrutiny and that drivers and owners should be able to point to industry standards and the consequences of breaches of this in terms of hazardous practices. The submission recommended a free internet site be established to provide details of the OHS performance of trucking companies including workers' compensation claim rates, driver turnover, average trip times against a standard set by the NRMA, number of incidents, and mapping the frequency of use of trucking company by name and size of clients. The submission argued that licensing requirements or incentive be used to induce trucking companies and retailers to provide such information. In other words, the centralisation of information would allow for more informed decisions by consumers and other groups.

During the course of the Inquiry the NRMA and the NSW STAYSAFE Committee raised concerns about their access to sufficiently detailed and up-to-date information about the safety performance of the long distance trucking industry. They were by no means the only parties to raise this issue and have been identified to highlight organisations left of the loop who most would assume would, given their role, be given priority access to such information.

Concerns about the availability of information on safety performance in the trucking industry were not confined to NSW. Associate Professor Phillip Laird from the University of Wollongong (oral submission) stated:

We could get a lot better data. I can got to the web page of Australian Transport Safety Bureau and download quite detailed statistics state by state on fatalities, hospitalisation in road crash victims but if I want to get from them information relating to trucks it's a special inquiry. We could have more of this data out in the open.

In the view of the Inquiry these are entirely legitimate concerns. Indeed, given evidence presented throughout the Report it is reasonable to suggest that the absence of ready access to such information has hampered the development of a more co-ordinated and strategic approach to improving performance in the industry and ensuring key stakeholders are informed and able to contribute. When the Inquiry came to prepare information on OHS performance in the industry it was surprised at the amount of information that was either not published in a summary form or even available at all. While attributing blame to no particular organisation for this state of affairs (indeed a number like the RTA, WorkCover and FORS readily co-operated to provide this information), it is a situation in urgent need of change. Transport operators, clients, the TWU and CFAT (amongst others) also should be able to access information on safety performance in the trucking industry so as to, in the case of a transport operator, benchmark its own performance. Equally, a client should have some basis for identifying where the safety performance of operators tendering for a contract stands in relation to industry standards. The Inquiry has made a specific recommendation to address this issue.

Another aspect of the problem that has already been raised at various stages of this report, was getting a better degree of coordination amongst those engaged in on-road enforcement as well as the enforcement activities of the various agencies more generally. In other words, highway police must understand enough about the role of RTA and WorkCover inspectors to work harmoniously and effectively, to identify incidents worthy of further investigation. It will be especially important that RTA and WorkCover inspectors understand each other's role. If WorkCover inspectors are to operate effectively involved it is essential that they know something about the long haul road transport industry so it would seem advisable therefore for this activity be undertaken by inspectors specially trained for the task. Enforcement personnel in all three agencies should receive some exposure to the risk factors underpinning enforcement problems underlined in this Report and the regulatory devices in place that designed to address this. The ATA (oral submission, Mike Edmonds) has recommended that police and other enforcement officers receive competency-based training in FMP and management systems such as TruckSafe. While the Inquiry did not investigate those training programs currently in place submissions to the Inquiry indicate a degree of confusion that suggests this is warranted. Some shared short course training or interactive workshops would seem a very worthwhile measure (perhaps both a regional and metropolitan level) to increase understanding and overall effectiveness.

In sum, this Report recommends that appropriate retraining of regulatory officers be undertaken to improve understanding of new regulations, the specific role of each agency, overlapping responsibilities and collaborative enforcement.

6.1.2.1 *A coordinating body or lead agency?*

Beyond information sharing and other specific problems already mentioned, there was a recognised need for some overall coordination in terms of a more strategic approach to regulation and enforcement. In other words, there was a perceived need, which this Inquiry endorses, for some mechanism to not only deal with the problems just identified by to provide

for a more cohesive approach to the entire industry. This raised the question of how this could be best achieved and in terms of such a structure which agency should take the lead role. Here views were mixed although almost all submissions saw the need for a stronger input from OHS law which presumably meant a larger role for WorkCover – something contrary to WorkCover's own submission. The stronger input from OHS law might be seen to add to, rather than rectifying, co-ordination problems. Apart from WorkCover, very few parties raised this as an issue and evidence so far suggests that lines of demarcation, areas of collaboration and questions as to the most appropriate legal remedies for particular types of offences have been accommodated amicably thus far. The issue is not unique to Australia, being explicitly addressed by a recent inquiry into Tranz Rail in New Zealand. The final report of this inquiry (New Zealand, 2000:49) recommended that OHS legislation should play a much stronger protective role, to be used in conjunction with the existing licensing system administered by the Land Transport Safety Authority. The report argued that OHS legislation should be administered by HSE inspectors (the OHS agency) not the LTSA because of their greater experience in undertaking investigations and prosecutions using general duty provisions and would avoid demarcation problems. A further if implicit reason for this approach seems to have been a lack of confidence in the LTSA (evidence in support of which is found elsewhere in this Report). Of course, another solution would have been to create a new agency with exclusive OHS jurisdiction in this area.

Some organisations expressed no strong views about which bodies should be regulating the industry. Rather their prime concern was that whatever regulation was used should achieve tangible outcomes in terms of encouraging improvements in business practices, scheduling, fatigue and other factors pertaining to safety (see for example written submission NRMA).

A suggestion from WorkCover NSW (written submission, page 32) was to establish an inter-agency body to coordinate a 'whole of government' approach to the regulation of the industry.

With these considerations in mind, WorkCover is inclined to the view that the interests of the transport industry, including the LHT industry, might be well served by the operation of a special joint-agency body which would be acknowledged as the principal advisory body for the management of the regulation of safety in the industry in NSW.

WorkCover suggested this body could be modeled on the Major Hazards Inter-agency Committee, with representatives from the MAA, EPA, RTA, Police and WorkCover, with NRTC interaction.

Another solution to these coordination problems, which could incorporate elements of the last point, would be to establish an agency with a primary responsibility for trucking safety that could coordinate the input of other agencies. This need has been recognised and addressed elsewhere. For example, as already noted in this report in the USA the Federal Motor Carrier Safety Administration undertakes a number of these tasks. Another possible model can be found in the Tow Truck Authority of New South Wales. This body was established in an attempt to deal with an industry that was widely regarded as out of control, with widespread corruption (pay-offs between tow truck operators and panel beaters/car repairers) and a history of violence ranging from common assault up to an including murder. The Inquiry originally spoke to the General Manager of the Authority, Frances Marshall, and its Chair, Peter Anderson, following oral submissions to the Inquiry that two truck operators were offering to remove drugs and other prohibited objects for drivers from trucks after smashes. At the same time, the Inquiry became interested in the actions of the Authority in cleaning up the industry, helping tow truck operators to achieve an improved level of professionalism (and ethics), financial performance and self-esteem. It was also interested in the Authority's efforts to reduce costs/improve efficiency and coordination in the attendance of tow truck operators, emergency services and other groups at highway truck smashes (for an indication of the scale of these costs see Section 2 of this Report). Put bluntly, the Inquiry was impressed by the

success of the new Authority to address such an entrenched culture of illegality and dubious practice within a relatively short period. It did this with a judicious mixture of carrots (including business training for operators) and sticks (potentially loss of the license essential to operate in the industry). Although it may be too early to proclaim the Authority a complete success, available evidence clearly indicates it has achieved a decisive shift in the culture of the industry, something previous government efforts had conspicuously failed to do. From independent sources the Inquiry was able to verify the respect that tow truck operators held the Authority and its General Manager.

There are obvious and significant contextual and jurisdictional/regulatory differences between the tow truck industry and the long haul trucking industry. At the same time there are also some disturbing parallels in terms of widespread illegality and where, as far much of the community is concerned, there is a lack of controls. The more the Inquiry looked at some of the deep-seated problems identified in this Report the more essential it became for an intervention that would achieve a decisive break, that lead to a measurable improvement in safety. By enabling the industry to fulfil its tasks in a professional manner, it would also, in the longer term, allow the industry build a deserved self-esteem for making a vital social and economic contribution to the Australian community. In New South Wales there are approximately 7,000 tow trucks registered with the Tow Truck Authority whereas, by way of comparison, time there are at least 30,000 registered for-hire long haul trucks operating in this state. If the government considers it appropriate to set up the Tow Truck Authority to govern that industry it seems that it would be appropriate for it to set up this recommended Authority for the long haul trucking industry. Not only are the number of people involved much greater but the industry itself is more vital to the overall economic well being of the community. As set out in this Report, the considerations sufficient to justify establishment of such an authority are extensive and serious and require that firm and positive methods be adopted to rectify the situation.

6.1.2.2 *Dealing with regulatory agency co-ordination in other jurisdictions*

The Inquiry obtained information pertaining to coordination in other jurisdictions, which provide some basis for comparing the situation in NSW. In the past, as in NSW, the key coordination point in other jurisdictions has been between the principle road transport agency (the equivalent of the RTA like Queensland Transport) and the Police service. The relationship between these bodies and the OHS agency (like WorkCover) was far less important although this will change given the growing involvement of the latter in road transport (at least in jurisdictions like Victoria and Western Australia).

A number of the co-ordination problems identified by this Inquiry are not unique to NSW. Indeed, Perrone (see above) identified very similar problems in Victoria with regard to the investigation and prosecution of corporate criminality in relation to truck driver deaths. At the same time, during the course of its investigation the Inquiry became aware of several very positive developments. In Victoria a Transport Industry Safety Group was established in 1996 following a coronial inquiry into the death of a young boy hit by a truck with the aim of creating a safety culture in the industry. The group is composed of the Victorian Road Transport Association, Transport Workers Union, VicRoads, Bus Association of Victoria, Monash University Accident Research Centre, Victoria Police and the Victorian WorkCover Authority. In addition, the State Coroner has observer status (somewhat ironically given that his inquest findings on the relationship of fatigue to truck fatalities played a crucial role in establishing the Group). This Inquiry believes the inclusion of the coroner represents a crucially important link given Perrone's analysis and other evidence presented to it, helping to bridge some key historical divides. The Transport Industry Safety Group has made a concerted effort to address the issue of fatigue. It has helped to create a greater awareness of OHS in the trucking industry and to achieve a level of co-operation between the industry,

union, police and other regulatory authorities which seems to exceed that achieved in other jurisdictions.

In addition, a Victorian Enforcement Liaison Group was established in 1992 to improve the relationship between enforcement agencies and transport industry participants. Membership of the group includes the Transport Workers Union, Victoria Police, VicRoads, Victorian Workcover Authority, Environment Protection Agency, Country Fire Authority, Metropolitan Fire Brigade, Driver Education Centre of Australia, Bus Association of Victoria, Sherriff's Office, Victorian Road Transport Association and numerous transport companies. The Victorian Transport Enforcement Liaison Group meets regularly and provides a useful venue for not only getting a better interchange of ideas on effective enforcement measures but also in facilitating the distribution of information raising operator awareness of hazard problems and areas of regulatory concern. In its Member Alert bulletin the Victorian Road Transport Association publicises the outcomes of liaison group meetings and regulatory developments, including highlighting specific hazards/incidents (recent issues dealt with falls from heights, hazards posed by road reconstruction, a police blitz and improving diet to combat fatigue. *VRTA Member Alert* No.12-15 August to September 2000). According to Roger Sanders from the Victorian Road Transport Association many hundreds of industry specific issues have been dealt with during this time including concerns about the operations of companies, enforcement agency procedures through to direct input into proposed legislative amendments. He argued the success of the group has been its ability to solve problems or issues of concern without being weighed down with red tape and that all agencies involved endeavoured to provide immediate response to issues raised. In its written submission, the Victorian Road Transport Association also pointed to joint Police/WorkCover operations although it expressed the view that where these did not involve injury or death they were not especially resource effective.

Both the Transport Industry Safety Group and the Victorian Enforcement Liaison Group appear to have played a useful role in promoting OHS within the trucking industry. The Inquiry has drawn some lessons from this in making its recommendations.

In its submission, Queensland Transport (written submission, page 23) stated it had achieved a close working relationship with the Queensland Police Service, reflected in a number of working groups and planning forums, involving both senior management and operational staff. These bodies included the Road Freight Industry Council, Queensland Transport and Queensland Police Liaison Meeting, Intelligent Transport Systems Executive Steering Group, Pacific Motorway Enforcement Working Group, Legislation and Enforcement Committee and Heavy Vehicle Management and Logistics Steering Committee. The submission also pointed to joint operations targeting specific issues, some involving a number of jurisdictions, such as the recent Aust-Trans operation (see above) which were expected to result in a number of 'chain of responsibility' prosecutions. At the same time, the submission identified areas where further improvements in coordination were being sought, most notably the establishment of a shared Queensland Transport/Queensland Police compliance database that was currently being explored. As already noted, the issue of data sharing and coordination is an issue that was raised repeatedly in the NSW context as a necessary step towards more effective enforcement.

6.2 Resourcing

Many if not most major organisations (industry associations, insurers, the TWU amongst others), making submissions to the Inquiry, argued regulatory agencies and their enforcement activities were seriously under-resourced. Some evidence supporting this view has been presented in earlier sections of this Report. The point was made in relation to all three agencies that are or could be involved in enforcement, namely the police, RTA and WorkCover. In some cases it was even suggested that resourcing had been cut back. For

example, some operational police complained of a significant (ie around 10%) reduction in the number of highway patrol officers over the past eight years with flow-on effects to the number of infringement notices issued and kilometers travelled. This claim received support from a number of truck drivers and operators. The suggestion was made that the heavy trucking industry was not viewed as sufficiently critical in terms of overall crime reduction but the Inquiry was unable to investigate the veracity of this.

In its submission, the Australian Trucking Association (ATA) stated that in relation to the extent of proper enforcement:

The industry believes that this area is severely under-resourced. This has been exacerbated by the reduction in the real numbers of enforcement officers dedicated towards the industry combined with an increase in vehicle numbers (written submission, ATA p4).

For its part, NRMA argued:

If the RTA was to continue as the lead body in terms of regulating the industry then an increase in resourcing needs to be considered. NRMA understands that there are approximately 330 inspectors in total NSW. This number represents all staff, including field staff using mobile weighing devices and randomly stopping trucks to check weight, log books etc. The random nature of this component of the regulatory systems suggests that it is a most effective method of identifying non-complying drivers and companies. NRMA believes more resources should be applied to this area to increase the chance of detecting transgressing drivers (written submission NRMA).

The Victorian Road Transport Association (oral submission) believed the WorkCover Authority was under-resourced if, as it advocated, WorkCover inspectors were to take a far more active enforcement role in the long haul trucking industry. This was especially the case given the time and expense of the very serious prosecutions the agency was likely to be involved in. The Inquiry accepts this argument and believes it would apply to other jurisdictions, including NSW.

In terms of funding additional resources a number of proposals were made. In its written submission NRMA, for example, supported an allocation of revenue from truck driving infringements to increase resources for enforcing regulations governing long haul road transport.

As the ATA's position implies, concerns about under-resourcing of regulatory activities in the road transport industry is by no means confined to NSW. The Victorian Road Transport Association, for example, argued that all three main regulatory agencies (police, WorkCover and road transport authorities) failed to allocate the financial resources, training, equipment or manpower sufficient to effectively police the industry. It also argued the agencies needed stronger powers of search and discovery (written submission, TMA/VRTA).

Of course, the issue of resourcing cannot be divorced from questions about the effective use of available resources. As is clear from the previous first part of this section, increased coordination amongst regulatory agencies at both state and national level has the potential for making better use of available resources. There is also the question of agencies making the best use of available resources, including achieving the optimal mix of compliance instruments. In its written submission, Queensland Transport (page 24) argued making the best use of available resources required careful prioritisation and targeting (citing an increase in the number of infringement notices for mass in the past 18 months as evidence of this). To create a higher perceived risk of detection of non-compliance, Queensland Transport has implemented a randomised enforcement strategy (REDS), a computerised database designed to analyse strategic data and direct enforcement to targeted locations. Queensland Transport

argued the system identified locations that might otherwise not be selected and random deployment helped to create uncertainty amongst operators, thereby maximising the deterrent effect. Current issues for targeting included the road damage caused by overloaded vehicles, heavy vehicle fatigue crashes, heavy and light vehicle crashes due to defects and unregistered vehicles/non-payment of third party insurance.

This issue clearly overlaps with a number of areas already canvassed by the Inquiry. An obvious example is the issue of alternative compliance schemes. Queensland Transport (written submission, page 24) argued that tough penalties and innovative sanctions must be utilised for serious offence. At the same time, alternative compliance schemes provided a tool of educating the industry to practices that were both more efficient and safer as well as freeing up resources to target those operators most likely to breach regulations.

In a similar vein, it was argued that a reduction in the number highway patrol officers in NSW was justified by the increasing use of technology (speed cameras, breath testing etc). However, several operational police and ex police spoken to by the Inquiry were of the view the effectiveness of these measures or alternative compliance regimes had not been properly researched, including gathering feedback from highway patrol officers about the best way of tackling problems.

Most of the submissions pointing to more efficient use of compliance resources referred to a relatively conventional package of offences and target offenders (ie drivers and operators) rather the remedies addressing the underlying causes of these problems and the other parties that may influence operator behaviour (such as consignors). This was not a view shared by the EPA that pointed to the deterrent value of prosecuting parties towards the top of the decision-making chain. Nor was it the view of the Victorian Road Transport Association. The Association endorsed targeting of prime offenders for serious offences and questioned the value of some joint Police/WorkCover exercises where there had been no serious injuries, arguing these proved to be very resource intensive and involved dealing with large volumes of documents prior to a successful prosecution (written submission). The ATA too called for a more targeted approach, including using the supply chain model to address illegal practices at all levels (oral submission, Mike Edmonds, ATA). It, like a number of other bodies, argued that the regulatory authorities already often knew who the problem operators etc were but continued to use a broad-brush approach that wasted resources and sent conflicting or ambiguous compliance messages to the industry. The point was reinforced by David Anderson (oral submission) from NatRoad, who referred to the enforcement resources spent addressing the issue of bug deflectors (see discussion earlier in the Report) or small dimension/positioning problems with wide-load signs. While such criticism can be easily misconstrued (minor offences – and defining what is minor is not unproblematic - still require some level of enforcement) the Inquiry formed the view that there had been insufficient strategic targeting of enforcement activities. In particular, the demonstrable pursuit of systemic offenders such as recalcitrant operators as well as prosecutions against higher chain parties such as customers and consignors is likely to have a far more substantial deterrent effect than present activities.

The Inquiry believes regulatory agencies are moving in this direction but too slowly. Similar problems can be identified in the early period of enforcement following the introduction of post-Robens model OHS legislation in Australia in the 1980s. To accelerate this process, it would be valuable if part of the increase in enforcement funding was specifically devoted to this issue, including retraining regulatory agencies. At the same time, some attention needs to be given to the level of resourcing of on-road enforcement, including the number of highway patrol vehicles covering particular routes.

6.3 Conclusion

The Inquiry concludes that coordination and resourcing of regulatory activities in relation to safety in the long distance trucking industry are major issues that should be addressed as a matter of urgency. Specific recommendations are made to address this as part of the Code of Practice proposed.

SECTION 7

RECOMMENDATIONS: INDUSTRY CODE OF PRACTICE

The community expects a high level of safety in all areas of transport. Road users have a right to travel the nation's highways without encountering speeding trucks or those driven by fatigued drivers. Long haul truck drivers and their families have a right to expect that they can perform their tasks efficiently without pressure or inducement to break road safety or other regulations, and without exposing themselves to appreciably greater risk than other workers. Small, medium and large transport companies have a right to expect that they can undertake their business diligently and efficiently within existing regulatory standards and without being undercut by less scrupulous operators. Customers/clients, consignors and brokers have a right to expect that freight will be delivered efficiently at the lowest price but not a rate or schedule that effectively compromises safety standards. Other modes of transport have a right to expect that they will not suffer a competitive disadvantage because lower safety standards are applied to road transport and there is widespread flouting of even these standards. The community has a right to expect that government and its agencies will, as far as possible, ensure these outcomes which benefit the community as whole by addressing and if need be prosecuting any party failing to meets its obligations under legislation.

As this Report has shown, commercial arrangements that are common in the industry, the current regulatory framework and compliance strategies are not conducive to achieving the optimal level of safety performance in the industry. Rather, they have resulted in an outcome that falls far short of this.
The key is to address these issues. In other words, there is a critical need to deal with the underlying causes of the problems plaguing the industry rather than quick-fix solutions that merely address the symptoms.

The Inquiry brief was to develop a Code of Practice for the Industry to address any serious problems identified. Codes of Practice, including Industry Codes of Practice, developed under occupational health and safety legislation and similar statutes are not voluntary instruments (at most they permit more than one method for achieving compliance with an accepted standard). Following careful consideration it is also the strongly held view of this Inquiry that a voluntary code would be inappropriate and ineffective in the long haul road transport industry. The reasons the Inquiry has come to this conclusion are detailed in the Report (but see especially Section 5). The Inquiry is aware of discussions of a voluntary national Code of Conduct at national level that picks up a number of the problems addressed by this Inquiry. While cognizant of the desirability of a nationally consistent this has toe weighed against the prospects of such measures actually achieving anything. The Inquiry cannot support a voluntary code because to do so would be tantamount to conceding that the safety problems faced in the industry should be allowed fester. A similar point can be made in relation to self-regulation. Transport operators, drivers and other parties like consignors should be encouraged to take a more responsible approach. However, as many parties made clear, this was only likely to occur in the of context of vigorously enforced external regulation that lifted the baseline of safety performance and targeted those operators etc undercutting legitimate operators trying to do their business in a professional, legal and ethical manner.

The Code of Practice recommended has four key elements along with eight subsidiary elements or recommendations. The four key elements are designed to address problems that are the Inquiry found to be the root cause of poor safety performance in the long haul trucking industry, including industry structure and commercial practices.

First, there is a pressing need to address a serious coordination problem amongst regulatory agencies responsible for safety in the long distance trucking industry to achieve a more

coordinated, strategic and effective compliance program. It is recommended that a Long Distance Trucking Safety Authority be established in New South Wales with the responsibility of coordinating safety strategies in relation to the industry and undertaking its own investigative and compliance activities. The Authority should include a small inspectorate to undertake targeted compliance programs under the NSW OHS Act. Inspectors will also have powers under Road Transport and Industrial Relations legislation.

Second, there is universal agreement that one of the key problems that beset the industry is that it is too easy for inexperienced, ill-prepared and heavily indebted operators to enter the industry and for rogue operators to continue to operate with impunity. Existing reactive forms of regulation and enforcement are incapable of addressing this situation and what is needed is a more proactive and resource efficient method of ensuring that those wishing to enter the industry meet certain basic standards and that those already operating meet basic safety performance standards. Therefore, the second element of the Code is an operator licensing system that extends to consignors and loading agents (so that they too meet certain basic standards). The Long Distance Trucking Safety Authority will be responsible for administering a compulsory licensing system covering operators (including owner/drivers), freight forwarders, consignors and brokers/agents. The licensing system will ensure all operators meet basic business skill, OHS and other performance standards so they can undertake their tasks safely and so other parties, like consignors and agents are fully aware of their OHS and public safety responsibilities.

Third, there is overwhelming evidence that the existing logbook system fails to regulate driving hours while there is also need for a simple document detailing other safety-related matters so that customers, freight forwarders, operators and drivers can plan trips safely (commensurate with their responsibility and control). Regulators and enforcement officers also need a document that specifies basic safety information to assist their compliance activities. Thus, another key element of the code is replacing the existing logbook system with a trip-based document. All trucks undertaking one way trips of more than 100km in NSW will be required to carry a Safe Driving Plan or Safe Driving Method Statement with copies of the plan to held and signed off by both the transport company and the client/consignor. This requirement will apply to any truck travelling more than 100km in NSW, including those crossing into NSW from other states that travel more than 100km in NSW. Failure to comply with the Safe Driving Plan or Safe Driving Method Statement requirement is to be deemed as a breach as of regulation in its own right as well as prima facie evidence of a breach of the general duty provisions of the NSW OHS Act. The components of the Safe Driving Plan or Safe Driving Method Statement are detailed in the Report.

Fourth, the final key element in the Code is the enforcement of minimum payments to drivers, including owner/drivers. Minimum award rates to employee drivers and safety-based payments for owner/drivers are essential for long-term safety in the industry. To address these two overlapping issues there are two sets of recommendations. First, it is recommended that additional resources be allocated to award enforcement in NSW and that more proactive forms of enforcement be undertaken. Further, the NSW government should seek the collaboration of other jurisdictions in matching measures. Second, that minimum legally enforceable 'safety rates' be established for owner/drivers to be decided by panel of the Industrial Relations Commission of NSW from applications made to it by the Long Distance Trucking Authority. Further, it is recommended that the NSW government seek corresponding measures from other jurisdictions.

The remainder of this section will outline the elements of the Code in detail.

7.1 Achieving a coordinated strategic approach to regulating safety in long haul road transport

There is a pressing need to address a serious coordination problem amongst regulatory agencies responsible for safety in the long distance trucking industry to achieve a more coordinated, strategic and effective compliance program. To achieve this in NSW a coordinating mechanism is required which could serve a number of related functions, without compromising the legitimate and essential roles of the Police, RTA etc. What is needed is more than committee-based collaboration as the role is too demanding and this approach has been tried and failed in the past. Rather, there is need to establish a formal body. As noted in the body of the Report, there is already a model for this with the Tow Truck Authority of New South Wales, which has worked well. In New South Wales there are approximately 7,000 tow trucks registered with the Tow Truck Authority whereas, by way of comparison, time there are at least 30,000 registered for-hire long haul trucks operating in this state. If the government considers it appropriate to set up the Tow Truck Authority to govern that industry it seems that it would be appropriate for it to set up this recommended Authority for the long haul trucking industry. Not only are the number of people involved much greater but the industry itself is more vital to the overall economic well being of the community. As set out in this Report, the considerations sufficient to justify establishment of such an authority are extensive and serious and require that firm and positive methods be adopted to rectify the situation.

The function of the Authority would be to coordinate information exchange (and the collection of relevant information from various agencies) and compliance strategies in relation to safety in the long distance trucking industry as well as to directly carry out a number of specific functions identified below.

It is therefore recommended that the Parliament of the State of New South Wales pass appropriate legislation to establish a new Authority that could be known as the Long Haul Road Trucking Safety Authority or by some other suitable name. Legislation should also be enacted to effect the other recommendations set out herein, either in the Act that establishes the Authority or by amendments to other relevant statutes. The recommended legislation could be called the *Trucking Safety Authority Act.* It is envisaged that the proposed new legislation would to a considerable degree unify and bring together the various aspects of the different acts that apply to the industry. The Authority itself would then in addition coordinate other regulations and the activities of other bodies in so far as they apply to the industry.

It would be the purpose of the Long Haul Trucking Safety Authority to -

(a) coordinate with other departments and authorities in NSW in so far as these are related to long haul truck operation including the collection of relevant information from all agencies,

(b) make recommendations to those departments and authorities with regard to the development, implementation and enforcement of existing legislation,

(c) implement the reforms which the government would legislate to apply the recommendations set out herein and others which it considers appropriate,

(d) run the inspectorate with primary powers of enforcement under the NSW Occupational Health and Safety Act as well as relevant sections of road transport and industrial relations legislation, to liaise with industry organisations to facilitate the safe and efficient operation of the industry in all its aspects,

(e) promote an awareness amongst clients, consignors, brokers and other parties aside from operators and drivers of their responsibilities in relation to safety in the long haul road transport industry

(f) provide personnel to educate those involved in the industry on the best and most appropriate means of achieving the purposes of the industry for the overall benefit of the community

(g) liaise with relevant agencies in other jurisdictions and at national level

The Authority would be governed by a Council that would also act as the formal coordination mechanism for government agencies responsible for truck safety along with representation of truck drivers, transport operators and the community and other road users. The Council could be established by the legislation used to establish the Authority and the Board (see below), the proposed Trucking Authority Act.

It is proposed that the Council consist of the following representatives:

(a) the General Manager of the Authority itself
(b) one person appointed by the Minister or Ministers responsible as representatives of each of the following organisations:
    (i) The NSW Police Force
    (ii) The Roads and Traffic Authority
    (iii) WorkCover NSW
    (iv) The Motor Accidents Authority
    (v) The Department of Industrial Relations,
    (vi) The NSW Coroner
    (vii) The NSW Road Transport Association,
    (viii) The Transport Workers Union
    (ix) The Concerned Families of Australian Truckies

This structure ensures that all key agencies are represented along with the major NSW industry association, the union representing drivers, a body representing the families of drivers and the NRMA, representing motorists/road users. In the course of investigation the Inquiry was convinced of the justification of nominating these organisations as especially important, and evidence supporting this selection can be found in the Report. While other bodies have legitimate interest in trucking safety, they claims to inclusion are not as compelling as those included and to add to membership adds the risk of making the Council unwieldy.

Above the level of the Council, a Board should be established to oversee the immediate operations of the Authority. The Board should consist of the General Manager, a chairperson and a deputy chairperson would run the proposed Authority. It would be the responsibility of the General Manager to actually administer the Authority on a day-to-day basis. The chairperson and the deputy chairperson would be appointed by the responsible Minister or Ministers as part time members and as representative of the government of the day. The Board would determine the aims and policies of the Authority and the General Manger would administer the Authority in accordance with those aims and policies as determined by the Board. As well as determining the aims and general policies of the Authority the Board would be responsible for the overall planning of the work to be done by the Authority, including all of the obligations that might be imposed on the Authority by any statute. The General Manager would apply the decisions of the Board in all areas and the Board would be responsible for seeing that the General Manger was carrying out his responsibilities in accordance with their determinations.

It is proposed that such an Authority would be self-financing rather than financed by the community at large. Although the benefits accruing from the operations of the Authority will be for the whole community it is nevertheless primarily for the industry and those involved in

the industry to enable it to function properly and effectively. It is appropriate therefore that it be financed by the industry itself rather than be a burden on the whole community.

Initially it would need to be financed by the government in order that it be able to be established and so that it can itself set up the framework for the self financing of its operations. As the benefits to the overall community are in an industry which is vital to the operations of the economy it is appropriate that the community should be willing to pay this price to make sure that this industry runs effectively, efficiently and safely. Once it has been established the Authority could fund itself on a continuing basis from the revenues to be received from the following -

(a) the licence fees which would be made compulsory under the proposed legislation
(b) the revenue deriving from the enforcement activities of the Authority itself
(c) a levy of Compulsory Third Party Insurance premiums
(d) other funding activities which the Authority might consider to be appropriate in the conduct of its operations

In order to facilitate information flows the Trucking Safety Authority should establish an Internet site that would include up-to-date information on:

- Up to date national and state data on OHS performance in the industry with sector breakdowns (eg livestock) where possible and international benchmarks
- Government or Authorities policies
- accreditation requirements
- any new or proposed trucking legislation
- industrial rights and entitlements
- fatigue management
- load securing
- ergonomics
- vehicle performance comparisons
- manual handling
- trucking industry statistics and data base not specific to OHS
- drug and alcohol education programs
- business skills education
- occupational health and safety information aside from the data mentioned above (including survey results, relevant publications etc)
- training and qualification issues
- electronic training Internet program
- environmental issues
- new technology
- regular list of principal contractors and their subcontractors

It is proposed that the site would contain links to other trucking industry web sites and industry electronic surveys.

The Inquiry recognises that, while a statutory authority is its preferred option, another structural arrangement may achieve the same outcome, namely establishing a Permanent Taskforce chaired by the Motor Accidents Authority and with representatives of all the relevant government agencies to carry out the role identified in relation to the Authority. If the latter option is pursued then suitable safeguards (including meaningful benchmarks and reporting requirements) should be put in place to ensure the Taskforce can and does carry out its task of facilitating a more coordinated and proactive approach to regulation. Further, if the Taskforce rather than Authority option is pursued then suitable arrangements will need to be

made for administering the licensing system, inspectorate and other compliance measures proposed below. As the New Zealand experience all too clearly shows, if the compliance regime is not suitably resourced and implemented then it will amount to little more than tokenism.

Authority Inspectorate

To ensure that the Authority can carry out its functions effectively the Authority requires a small inspectorate. The two most critical functions of the inspectorate will be in the areas of detecting and prosecuting serious breaches of OHS legislation (especially in connection to the Safe Driving Plan or Safe Driving Method Statement) and helping to administer/enforce the new operator licensing system proposed below. The grounds for the latter will be discussed below but in relation to the former the following points can be made.

As the Inquiry has been at some pains to demonstrate, the long distance trucking industry is presently subject to a piecemeal array of legislation directly addressing or significantly affecting safety including road transport legislation, environmental legislation, OHS legislation and industrial relations legislation. In short, the industry is governed by various pieces of legislation that are applied by different departments and authorities with varying degrees of effectiveness. Overall, current enforcement practices remain too driver focused leaving other parties such as operators and more especially consignors, agents/brokers and customers largely exempt from responsibility for the safety consequences of their actions. Attempts to address these deficiencies have their own limitations. For example, the 'three strikes' scheme has encountered serious jurisdictional hurdles. Likewise, chain of responsibility initiative, while having potential, is seriously deficient in a number of respects including scope, the level of penalties, as well as a proven pattern implementation sufficient to change industry practices. There is also insufficient proactive compliance activity in relation to award evasion. Finally, while the OHS Act does cover the industry and provides both in the view of this Inquiry and an opinion prepared by a eminent legal expert (see Appendix 3), an demonstrably superior remedy (in terms of scope and remedies) for serious breaches it has not been used. This situation must be rectified and a better mix of enforcement tools provided for.

It is recommended that the Authority inspectors be given the full power under the NSW OHS Act of WorkCover inspectors (with appropriate training) plus some inspectoral powers under road transport and perhaps industrial relations legislation. The primary object of Authority inspectors will be to enforce provisions of the NSW OHS Act. Inspectors will receive both training appropriate to this as well as training in matters relevant to trucking industry. Existing knowledge of the industry may be a distinct advantage to inspectors and this may be taken into account in selection. Granting them some powers under road transport legislation is primarily to ensure that inspectors are aware of technical specifications (relating to vehicles, overloading and the like) and requirements of road transport legislation and can work effectively with RTA inspectors and Police during coordinated campaigns or blitzes and the like. Authority inspectors will not take on the tasks now undertaken by the RTA and Police but will be able to cooperate with them and enable an optimal mix of compliance tools are used to meet the circumstances of both particular incidents and the enforcement strategy as whole. The alternative of WorkCover allocating some of its own inspectors to this task is not favoured. The WorkCover submission to the Inquiry expressed reservations about taking a strong role in road transport (preferring the RTA as the lead agency) and its resources are already arguable stretched. Far more importantly, there are distinct advantages in having a dedicated inspectorate in an industry with a complex array of overlapping legislation and need to collaborate with other agencies, as well as the need to understand specific commercial arrangements and the long history of regulatory evasion. The Inspectorate will also play a critical role in terms of detecting and the launching of 'up the chain' (ie operators, consignors,

freight forwarders and clients) prosecutions for failure to comply with OHS Act general duties using the Safe Driving Plan or Safe Driving Method Statement discussed below.

The Authority would need to be able to recruit inspectors from persons already involved in the industry who were suitable. It would also need to have a program of continuing recruitment and education so that it could maintain an appropriate supply of inspectors to carry out this work of supervision and enforcement.

Prosecutions under the Trucking Industry Authority Act would, as with other prosecutions under the NSW OHS Act be lodged with the Industrial Relations Commission by the Inspectorate.

Licensing of Operators, Freight Forwarders, Consignors and others

It is proposed that the legislation that establishes the Authority should also require all for-hire long haul operators, suppliers, freight forwarders, consignors to hold a licence for this purpose. It would not be legal for anyone to operate in the industry without such a licence and any such operation would be appropriately penalised.

The reasons for recommending this change are detailed at considerable length in the Report but can be briefly summarised here. Virtually every party giving evidence to the Inquiry accepted that the combination of ease of entry to the industry, poor business practices and limited knowledge of OHS and other vital information was a serious safety problem. The National Road Freight Industrial Inquiry (May et al 1984) proposed this should be addressed by a mandatory licensing system so operators and other key players needed to meet basic performance standards. It is now history that the proposal was legislated for but not implemented, and safety in the industry deteriorated, culminating in the Cowper smash in 1989 (the Inquest into which echoed the need for operator licensing). A vigorous legislative response but not licensing achieved improvements over the next two years but since then no improvement in the absolute level of fatalities has been recorded. The present level of fatalities involving articulated trucks remains unacceptable and there are other disturbing trends that we ignore at our peril. In the view of this Inquiry the reasons advanced by the National Road Freight Industry Inquiry (May et al 1984) for operator licensing were and remain sound, especially as like this Inquiry it recognised the critical impact of commercial practices on safety. As recent events in air transport indicate, such observations are hardly confined to road transport.

Given the complex and diverse web of commercial arrangements pertaining to the delivery of freight, as well as the capacity of other parties to affect this, licensing should extend to consignors and freight forwarders. This principle was accepted as part of the operator-licensing model proposed by the May Inquiry in 1984. While parties to this Inquiry expressed differing opinions as to whether lifting operator standards could be achieved by voluntary accreditation schemes (perhaps with incentives) such as TruckSafe or needs to be mandated the firm conclusion drawn here is that only the latter will achieve the desired result. For reasons expanded on in the Report no voluntary has indicated anywhere near the potential to recruit a substantial number of operators. The use of incentives is very unlikely to alter this and carries its own limitations. Further, those operators most resistant to voluntary schemes are precisely those who should be obliged to demonstrate a certain level of competence.

The Inquiry examined reasons advanced for not adopting the licensing model. The argument that a voluntary system will achieve the same result had already been dealt with. Other arguments were that the licensing model was impractical, would not work and that license fees would be used to raise funds rather than simply administer the scheme. In terms of practicality/effectiveness, the Inquiry will simply make several observations. First, operator-licensing schemes have been introduced in a number of other countries including the UK and

New Zealand. The licensing system was established in New Zealand under the Transport Services Licensing Act (1989). This Act establishes that before any person can hold the relevant licence in New Zealand then he or she has to show that they have a working knowledge of the law and practice with regard to the safe and proper operation of the industry in which they are engaged. The Act also provides that where a person does not conduct themselves in the industry in accordance with the requirements of public and industry safety then they can lose their licence and be removed from the industry. While, the effectiveness of schemes has been subject to some debate, with apparently better outcomes in the UK than New Zealand, the Inquiry believes that limitations here are largely a product of failings in terms of implementation/enforcement of the scheme rather than the general principle. Second, while operator licensing is seen as unacceptable by some sections of the road transport industry this is a proactive form of regulation, which places the burden of compliance on the operator rather than the enforcement agency. It is generally regarded as more cost efficient and effective than reactive enforcement (ie detecting and punishing offenders) - an approach some sections of the industry are all too adept at flouting. Further, the necessity and value of operator licensing is not questioned with regard to other modes of transport such as rail and air transport. It seems wholly unacceptable to this Inquiry that, notwithstanding some recent events, generally rigorous operator licensing is applied to air and rail transport in the interests of public and occupational safety but no similar requirement is applied to long haul road transport. Despite the fact the long haul road transport industry poses a far greater danger as measured by deaths and serious injury to its workers and the public it escapes the burden of meeting even a very basic version of the requirements placed on its major competitor. This is not logical in terms of transport policy and it is unacceptable in terms of public safety and OHS policies.

The Inquiry is sympathetic to the view that licensing should not become a revenue-raising device. This is not an argument against operator licensing per se. The fees raised from licensing should be restricted to covering the costs of administering the scheme and promoting higher standards of safety in the industry.

(i) Basic Licence Requirements for Operators and Freight Forwarders

Prior to the granting of a license it would be necessary for the applicant to be able to show a minimum standard of knowledge with regard to the areas relevant to the industry, for example -

- Safe Driving Plan and community responsibilities
- applicable legislation
- knowledge of work pricing
- driver rights and obligations
- occupational health and safety
- vehicle loading, load restraint and maintenance
- management of fatigue
- drug awareness
- communication
- business practices and marketing
- employer rights and obligations

The license requirement will apply to all for-hire freight operators. Some consideration should be given for large (ie with more than 20 trucks) not-for-hire operators of heavy vehicles engaged in long haul road freight transport tasks but the licensing system should not be directed at small not-for-hire truck fleet owners.

The Authority will be empowered to set the appropriate benchmarks for meeting the terms of the license and the procedures for establishing whether license conditions have been met, and appropriate auditing devices to ensure that these standards are maintained after issuing of the license.

Appropriate training mechanisms for delivery of appropriate training to meet license standards should be developed in conjunction with TAFE. The licensing system would remain distinct from the eight or so voluntary accreditation schemes such as TruckSafe, Truckcare and TransCare, There is room for accreditation schemes to exist alongside the proposed licensing system. Because of the small number of operators actually covered by the voluntary accreditation schemes there is no question of competing interests. The licensing system will apply to all who are involved in the industry. The accreditation schemes will still be open, as they are now, to those who wish to participate. They may develop a valuable niche in terms of moving from often very basic schemes to helping operators to achieve performance levels beyond those required for licensing purposes.

Transitional arrangements will apply to existing operators. These operators will be given a set period to demonstrate knowledge in the key areas identified above and obtain a license. This may be achieved in progressive stages so long as a overall deadline is met. It is the view of this Inquiry that all operators should hold a basic license within two years of the commencement of the scheme at the very latest. It might be appropriate that an entrant into the industry be allowed to operate on a very minimum knowledge of these matters for a period of time with activities subject to certain restrictions. To get a full licence the applicant would then need to show a more extensive knowledge of these various areas.

(ii) *Consignors, Loading Agents/Brokers and Certain Shippers/Suppliers also to be licensed*

The need for an operating license will also extend to consignors, loading agents and certain suppliers/load owners (namely those moving more than 10 long distance loads per year). This modified license will require these parties to demonstrate their knowledge of applicable legislation and regulatory requirements in relation to safety (including the Safe Driving Plan). They will also need to demonstrate knowledge their own specific responsibilities in terms the safety 'chain'.

(iii) *Appropriate Financial Advice*

As pointed out previously in this report one of the problems in the industry is that operators have no real financial knowledge or understanding of the industry and this can lead them into real financial difficulties. It might be made a condition of the granting of a full operators licence that such operator be able to provide evidence that he had received proper advise from an accredited financial adviser.

The Authority could keep a register of persons accredited to provide such advice and any suitably qualified adviser would be permitted to be included on the register subject to satisfying the Authority of his or her qualifications.

(iii) Penalties/Withdrawal of the Licence

The ultimate instrument for enforcing the necessary standards within the industry will be the power of the Authority, through its inspectorate, to withdraw the licence of an operator.

With regard to ordinary breaches of regulations and safety standards the Authority would be expected to impose a fine or some other penalty. Where an operator consistently shows a deliberate or reckless disregard for the overall welfare of the industry and the community then the Authority will be able to remove or suspend that party from participation in the industry.

Offences would be dealt with by a Magistrate in the Local Court or by the Industrial Commission.

Penalties would be, where applicable, those imposed by the Occupational Health and Safety Act. A percentage of these impositions could be allocated to financing the Trucking Industry Authority. This would also give the Authority an incentive to pursue its obligations with some vigour.

7.2 Introduction of Safety Driving Plan Trip Document

The second main recommendation of this Inquiry for inclusion in the Code of Practice is the creation of a new one-page safe work statement to be issued for every freight delivery task of more than 100 kilometers (for a discussion of legal aspects of implementing the plan see Appendix 2). This document to be known as the 'Safe Driving Plan' or 'Safe Driving Method Statement' will replace the present logbook system and also provide a single (and therefore easily accessible) reference point for critical safety-related information, directly related to the risk factors identified in this Inquiry. As the document will be prepared and signed in conjunction by the customer/consignor and the transport operator completing the task it will provide (with multiple copies to be retained by the parties and carried on the truck) it will bring all parties into the 'regulatory loop'. The Safe Driving Plan or Safe Driving Method Statement will also provide a ready basis for auditing/enforcement in relation to on-road inspections and the detection of systematic evasion by a party over a period of time.

In brief, the reasons for recommending the introduction of the Safe Driving Plan or Safe Driving Method Statement trip document are as follows:

- Evidence provided to the Inquiry by drivers, companies and industry associations, government bodies, the TWU and others was virtually unanimous in suggesting the logbook system was not working and, indeed, had been abused over many years. The reasons for this are detailed in the report but include the ease of forging entries and the onus placed on the driver who may be pressured or induced to cheat the system. For reasons that will be detailed below the new system avoids most if not all of these problems. It should be noted that the National Road Freight Industry Inquiry (May et al, 1984:174-183) proposed a standard industry trip document addressing a range of safety issues in response to some of the very problems identified by this Inquiry.
- By requiring specification of driving, work and significant rest breaks over the 24 hours prior to the trip, the Safe Driving Plan or Safe Driving Method Statement will be compatible with enforcement of the new fatigue management regimes being used in the industry than the present log book system.
- There is a need to bring all key safety relevant material into a single accessible source, which identifies and is signed by the responsible parties. The Safe Driving Plan or Safe Driving Method Statement provides a means to directly address the link between commercial practices and safety. At the same time the system will afford protection to those parties who undertake their commercial practices legally by providing a means of demonstrating due diligence in this regard. Again, it should be noted that the model trip plan proposed under the National Road Freight Industry Inquiry (May et al 1984:176-

177) specifically included shipper/load owner and prime contractor details. In other words, the need to include these bodies has long been recognised.

- The Safe Driving Plan or Safe Driving Method Statement document will be a single page A4 document that can be readily copied or faxed (if not transmitted electronically). The Plan will also counter the growing problem for enforcement agencies of e-commerce eliminating a paper trail of verifiable documents.
- As detailed in the Report and Driver Survey (Appendix 3), safe work plan systems have been successfully used in other industries, notably construction which, like road transport, has a large number of small operators/subcontractors (and if anything more complex array of tasks to address in terms of this plan).
- By establishing multiple copies held and signed by the responsible parties the risk of misunderstanding or possibility of forging the document is greatly reduced and the document provides a basis of auditing and prosecution. By providing an independent set of records it will reduce the current unsatisfactory onus on drivers having to testify against their employer or customer, with the risk (made all too clear to this Inquiry) of losing their job/damaging future work prospects.

Details of the Scheme

A one-page document entitled a 'Safe Driving Plan or Safe Driving Method Statement' is to be introduced into the long haul road transport industry with a specified format and unique identifier to be issued to operators by the Long Haul Trucking Safety Authority. The introduction of this scheme could be accomplished under the Trucking Authority Act with accompanying amendments to Road Transport and OHS legislation in NSW.

A model for the Safe Driving Plan or Safe Driving Method Statement is attached (see Special Appendix) but the main contents are:

(i) drivers details and operating license number

(ii) name and contact details of owner of vehicle including operating license plus principle contractor details where the task has been subcontracted

(iii) name and contact details of customer including industry operating license

(iv) insurance details

(v) speedometer reading on truck prior to departure

(vi) details of trip, specifying departure point and time, destination, route to be used and time for journey (expressed as range of a minimum number of hours with allowances for variations). A central database could be established through the Authority to provide calculations of reasonable trip times on different routes and at different times which could be accessed by companies.

(vii) details (totals and time periods) of time driver spent in 24 hours immediately prior to departure in (1) driving including local deliveries (2) other work activities such as loading, and (3) significant rest breaks (ie six hours or more). In practice, the Safe Driving Plan or Safe Driving Method Statement document/s relating to the prior 24 hours will assist in the preparation of any subsequent document by indicating hours spent driving. Each plan should identify the unique number of the most recent plan completed prior to the current trip.

(viii) rate paid to driver for the job (For employee drivers this will be at least the relevant minimum award rate expressed as a total amount. For owner/drivers it will be at least

the 'safety rate' [see below] expressed as a total amount) and specifying payment to be made within 14 days. This claim to be made against the principle contractor where a subcontracting of the freight task has occurred. The Safe Driving Plan or Safe Driving Method Statement document will constitute evidence of the claim that will proceed on the basis of a rebuttable presumption (ie the onus will be on the employer or contractor to demonstrate the payment is not owed) before a Magistrate in a Local Court or the Industrial Relations Commission. The use of bonus/penalty payments in connection with delivery times/schedules is prohibited [see below].

(ix) the demurrage rate (and payment to driver) to apply if the truck is not unloaded within one hour of arrival (demurrage to be mandatory and payment to drivers at least the award rate for employee drivers and the 'safety rate' [see below] for owner drivers).

(x) an undertaking by the operator that the truck has no defects/maintenance problems and the load has been properly restrained

(xi) an undertaking by both the operator and client that the truck has not been overloaded

(xii) identifying whether hazardous/dangerous freight are being carried

These details (apart from driver details and precise departure date) will be agreed to between the transport operator and the consignor/freight forwarder or load owner. When a driver collects a load he and the consignor/freight forwarder/client will complete outstanding details on the Safe Driving Plan or Safe Driving Method Statement. The plan form will need to entail multiple copies, and. self-carbonating paper would seem to be appropriate. Both parties will then sign the form.

A copy of the completed form will stay with the freight forwarder/consignor
(a) Two copies will go with the driver along with one copy of the Safe Driving Plan for the trip completed by that driver immediately prior to this trip (for use as verification by on-road enforcement officers)
(b) At arrival at the delivery point the driver and the recipient will complete the details on the speedometer reading at time of arrival, actual arrival time, total time taken for rest breaks and any other trips or side trips.

It will be necessary for the recipient then to execute the form and retain a copy for his own records and for audit by the RTA or Authority inspectorate.

Two copies of the plan are to be carried by every truck (along with one copy of the plan pertaining to the previous trip undertaken by that driver) and further copies are to be held by both the client/consignor. The Safe Driving Plan or Safe Driving Method Statement will provide an audit trail for the courts and the agencies responsible for safety in the long haul trucking industry, namely the NSW Police, RTA and Long Haul Trucking Authority inspectorate. This would provide a practical means by which these organisations are able to enforce legislative and regulatory requirements and provide owner/drivers a mechanism to address belated payment. An authorised officer (RTA, Police or Inspectorate) could retain one of the copies held on a truck during an on-road inspection (so long as this is duly noted on the remaining copy).
For reasons identified in the Report but summarised below, the requirement for a Safe Driving Plan or Safe Driving Method Statement should primarily be enacted under the NSW Occupational Health and Safety Act. However there should be corresponding provisions in road transport legislation so Police and the RTA can undertake on-road enforcement and so offences in relation to the plan can be used under the RTA's 'three strikes' program (including use of Safe-T-Cam). The requirement to carry a plan would apply to any for-hire freight truck

originating in NSW that carries freight on a single trip more than 100 kilometers and any for-hire freight truck originating outside NSW that carries freight on a single trip more than 100 kilometers on a NSW road.

Failure of a truck so designated to carry a plan, to carry an inaccurate or forged plan or the issuing of false or misleading plans by a transport operator, freight forwarder, consignor or supplier, or the failure of these parties to retain or supply records to an authorised inspector will constitute an offence under the Act (with suitable extension of this to the Police and RTA under road transport legislation). Failure to comply will also be deemed to be prima facie evidence of a breach of the relevant general duty provisions of the NSW Occupational Health and Safety Act (measures for achieving this are presented in the legal issues paper prepared by Associate Professor Richard Johnstone. See Appendix 2). Trucking Authority inspectors, Police, RTA and associations registered under the Industrial Relations Acts will also be empowered to check Driving Plan documents against wage-books/time sheets, tachograph records, Safe-T-Cam records and other relevant sources. The option of the RTA suspending or cancelling the driving privileges of operators, including interstate operators will extend to those operators refusing to supply their Safe Driving Plan or Safe Driving Method Statement records.

Because the Safe Driving Plan or Safe Driving Method Statement is completed at different stages and by three different parties it will be more difficult to forge and it is less likely that there will be collusion between the various parties involved in the transaction. Should it ever be shown that this has taken place then the penalties under the Act should be severe in order to discourage the development of any such practice. In such a situation the penalties should be directed against receiver and sender. This would act as an incentive to discourage any party from allowing any other party to indulge in any such practice.

There are a number of clear advantages in using the NSW Occupational Health and Safety Act as the relevant head of power for the Safe Driving Plan or Safe Driving Method Statement.

First, the NSW Occupational Health and Safety Act includes wide-ranging general duty provisions and there is a proven basis for enforcing these. This includes coverage of consignors and clients, although a limitation affecting both their and others duties in Sections 8 and 9 of the Act has been identified in the legal advice appended to this Report. This limitation, which is confined to the NSW Act and not found in other jurisdictions, should be addressed and an amendment to achieve this is recommended to achieve this. Notwithstanding this limitation, the attached legal opinion finds that, in comparison to 'chain of responsibility' road transport legislation, the Occupational Health and Safety has the potential to provide for more comprehensive regulation of the long distance trucking industry. The Act provides remedies demonstrably more likely to deter serious 'system' and higher chain (ie freight forwarder, consignor and client) offences.

Second, as any truck travelling in NSW can and should be deemed a NSW workplace there is no jurisdictional issue in terms of invoking the Safe Driving Plan or Safe Driving Method Statement requirement on both NSW-based and interstate vehicles. Irrespective of whether the jurisdictional issues raised in connection with state and federal road transport legislation are exaggerated or not, the Occupational Health and Safety Act should provide a platform where these issues are simply irrelevant.

Third, as a single page document the plan represents a simple device that nonetheless brings critical safety-related issues together and while relatively straightforward to prepare will encourage more systematic assessment and management of safety by the operator that is integrated into their normal business functions.

Fourth, the Safe Driving Plan or Safe Driving Method Statement has a good fit with the fatigue management regimes being implemented by more progressive companies in the industry. It can also be used in conjunction with a specific risk assessment document and several models of this are attached to the full Report.

The Safe Driving Plan or Safe Driving Method Statement provides the basis for simple and effective enforcement of key safety issues. For LDTSA inspectors the plans establish an audit trail of documents than be crosschecked in relation to the driver, the transport company/freight forwarder and consignor/load owner. Unlike logbooks, the plans have to be verified/endorsed by the transport operator and load owner (in keeping with their responsibilities) and as there are multiple copies of each plan, evasion or doctoring is more difficult and any inconsistency between copies would immediately alert LDTSA inspectors to a problem. As already noted, failure to comply the Safe Driving Plan or Safe Driving Method Statement requirements in any way should be deemed as prima facie evidence of a breach of the relevant general duty provisions of the NSW Occupational Health and Safety Act. This, in turn, can readily lead to an action against the driver but more importantly against the transport company/principal transport contractor (where a subcontracting chain exists) or the client or load owner. In other words, the Safe Driving Plan or Safe Driving Method Statement provides an instrument for implementing a chain of responsibility and one that, unlike the current road transport chain model, can conceivably deal with all major aspects of safety. By following the OHS regulatory model it is not only able to draw on a clear record of successful prosecutions for serious offences but also invoke, where warranted, far more severe penalties than those currently available under chain of responsibility in road transport legislation. Thus, it provides a way of shifting compliance balance away from an overwhelmingly driver-based focus to a more systems focus on all the parties (including drivers) with responsibilities for OHS.

It is the strongly held belief of this Report that this regime will encourage the patterns of internal responsibility that a number of industry spokespersons have been calling for. It will be in the interest of all operators to ensure that their trucks are driven in compliance with existing laws and to take actions to achieve this (through driver selection, training and supervision; contract/tendering arrangements; work scheduling and the like). Likewise, load owners will able to ensure that in relation to those aspects which they have control, trucks are not used in a manner which breaches legislation.

The Safe Driving Plan or Safe Driving Method Statement also provides a platform for a more integrated compliance regime in terms of the various regulatory agencies. As a one-page document the plan can be readily consulted and assessed, not just by LDTSA inspectors but also by on-road RTA inspectors and police officers (with a minimal amount of training).

7.3 Amend section 8(2) of the NSW Occupational Health and Safety Act, 2000

To facilitate the more effective implementation of the above recommendation the expression “while they are at the employer’s place of work” should be removed from section 8(2) of the OHSA 2000 (NSW), so that it resembles section 22 of the Victorian Act. Similar amendments should be made to section 9 of the OHSA(NSW) (the self-employed person’s duty).

7.4 Prohibition of bonus/ penalty payments in relation to delivery time/scheduling

Evidence given to this Inquiry has confirmed the findings of earlier research and inquiries that the payment of bonuses or penalties in relation to arrival time constitutes a powerful inducement to unsafe driving practices such as speeding and 'out of hours' driving. In one instance evidence was given that a driver subjected to these pressure took risks that ultimately resulted in the death of his son who was travelling with him. More responsible operators the Inquiry interviewed do not use bonus/penalty payments because they are only too well aware of the safety consequences of such inducements. The Inquiry also received evidence that the

use of bonus/penalties by transport operators was, at least in part, a response to the pressure and unrealistic schedule expectations of some clients and consignors, as well as a more general attempt to keep business in a competitive market. The situation where the lives of drivers and other road users are endangered the pressure imposed by bonus/penalties is unacceptable. This Inquiry strongly recommends that any form of bonus/penalty system in relation to delivery time/scheduling be expressly prohibited (this might be done as part of the Safe Driving Plan or Safe Driving Method Statement discussed above).

7.5 Enforcement of minimum award rates and introduction of a safety rate for owner/drivers

Evidence presented to the Inquiry indicates that low payments to drivers, including the failure to enforce minimum award rates for employee drivers and the lack of an enforceable system of rates for owner/drivers, is directly related to safety problems in the industry. As already implied there are two aspects to this problem, the failure to effectively enforce minimum award rates in relation to employed drivers and the absence of a minimum rate for owner/drivers. To address these overlapping but distinct problems the Inquiry would make two sets of recommendations.

Award enforcement and Employee Drivers

Award enforcement in the long distance trucking industry has been largely if not entirely complaint based in recent years and this approach, as recognised by industry associations as well as the TWU, has little impact on dissuading what amounts to evasion of the law. The Inquiry recommends that a more proactive and better-resourced approach is urgently needed. Accordingly, it is recommended that the NSW government allocate additional inspectors with specific responsibilities to this area from inspectors from the proposed Long Distance Trucking Safety Authority be empowered to undertake these tasks. Regions or operators most likely to be engaged in award evasion should be identified and targeted. Evidence given to the Inquiry provides some indication of those areas deserving of investigation.

Given the interstate nature of the industry it is also recommended that the NSW Government or its Department of Industrial Relations approach counterpart agencies at state and federal level to achieve a coordinated approach to increased enforcement activity in this industry. Like the recent federal fatigue inquiry, this Inquiry noted with great concern evidence it received on Australian Workplace Agreements which presumed average speeds that may well give rise to a breach of road transport legislation, occupational health and safety legislation or both. This situation requires urgent attention. As far as NSW is concerned, the Inquiry recommends that it be requirement to demonstrate that any enterprise agreement covering road transport does not compromise standards laid down in appropriate road transport or occupational health and safety legislation before it is ratified.

Regulating a safety rate for owner/drivers

There can be no question that the payment of low rates to owner/drivers which do not cover normal operating and capital costs and encourage cuts in relation to vehicle maintenance or efforts to fit in extra jobs constitute a serious risk to safety. To resolve safety problems in the industry it is therefore essential that the issue of rates is addressed to the extent it impacts on safety.

The recommendation of the inquiry therefore is that there be established under the existing Industrial Relations Commission a special Transport Panel to hear an application from the Trucking Industry Authority to set sustainable safe minimum rates, a safety rate. These rates would then become part of the Safe Driving Plan or Safe Driving Method Statement (see above) and be enforceable under occupational health and safety legislation.

Prior to making such an application the Authority would consult with the various organisations and bodies associated with and involved in the industry. The Authority, under its occupational, health and safety powers would then be in a position to enforce the rates fixed in this way. Enforcement would then be conducted through the Inspectorate under the control of the Trucking Industry Authority.

It must be pointed out that these proposals would only be concerned with fixing the minimum safety rate. They would not be concerned with the overall regulation of the rates that would be fixed by the market by those forces at work in the market place. It is plain however that there is a necessity for a safety rate to apply. This rate is not only required by the need to protect those involved in the industry but on account of the high cost that is presently being exacted from the community because of the lack of such a rate.

(i) Transport Panel

For the proposed purpose it could be appropriate for the Government to appoint a Transport Panel under the Industrial Relations Commission. This would have the advantage of tying the new body into an existing legal structure and of making use of the resources of an organisation that is already established and held in repute by the community. With this would come the provisions that already exist to enable the Transport Panel to enforce its rulings through the powers of the Commission, especially under the NSW Occupational Health and Safety Act. As noted in the appended legal advice, it is quite feasible for the Occupational Health and Safety Act to be amended so that failure to pay the safety rate determined by the Transport Panel or another rate (like the federal or state awards covering long distance drivers, even if the consignor and driver concerned is not technically covered by the award) is prima facie a breach of the relevant general duty provision.

This Transport Panel would be responsible for fixing the minimum sustainable safety rate for the industry. The Transport Panel would consist of a specified number of persons with wide experience and understanding of the various facets of the industry.

Periodically, the Trucking Industry Authority or other parties would make application to the Transport Panel to fix the minimum safety rate in the long haul trucking industry. The Trucking Authority would make a submission to the Transport Panel. The Transport Panel would then consider that submission and, in doing so, would make itself available to hear further submissions from those other parties deemed appropriate under the Industrial Relations Act. The determination of the Transport Panel would, when made, apply to the industry until such time as a further application was made by the Authority under its powers and determined once again by the Transport Panel.

(ii) Calculations

The Trucking Authority, when making its application to the Transport Panel for the determination of the minimum sustainable safety rate would do this initially by a written submission. Such submission would set out the rate that it is applying to have fixed as the minimum sustainable safety rate by the Transport Panel. In addition it would need to provide the Transport Panel with detailed advice with regard to those matters that it considers to be appropriate for the Transport Panel to consider in making its determination. Matters normally considered when calculating costs would include the following:

The various types of trucks and trailers
Distance travelled
Finance costs
Insurance costs
Registration costs
Fuel costs

Administration costs
Accounting costs
Taxation
Industry subscriptions
Mobile phone charges
Protective clothing costs
Loading agents fees
Load insurance
Tyres
Repairs and maintenance
Owner/driver margin
Return for labour and administration services
Profit margin

When an application for determination was lodged by the Authority with the Transport Panel, then it would be required for the Authority to notify predetermined parties as set out in the Trucking Industry Authority Act and as designated by the Transport Panel itself.

(iii) Deductions from safety rate prohibited

It shall be an offence for any customer, freight forwarder or operator contracting a driver to make any deduction from the safety rate. This is in addition to the prohibition on bonus/penalty payments based on delivery time, and includes any deduction made for 'administration', 'pallet fees', insurance and the like.

(iv) Waiting Time

As distinct from the rate referred to above the Transport Panel would also determine the rate that should be paid for "waiting time". At present one of the great difficulties of the industry is the waste of time of operators on account of poor scheduling. This is a major contributor to the lack of economic viability of the operators, the fatigue and drug use. To resolve this problem it is proposed that there be fixed a minimum return for waiting time in the form of a *fixed hourly rate* and that this rate be determined by the Transport Panel as part of its fixing of the minimum sustainable safety rate. It is accepted that a certain amount of waiting time is inevitable so it therefore appropriate that the rate for "waiting time" should *only apply after the expiration of a period of one hour* from the driver being at the point of delivery at the scheduled time.

7.6 Protection for Police when stopping trucks

Legislation needs to be enacted to provide protection to the Police where it is necessary for them in the interests of public safety to stop a vehicle from proceeding on its journey. Currently Police may be exposed to civil action for damages resulting from their stopping a vehicle.

Part of the operation of the Safe Driving Plan or Safe Driving Method Statement is that it includes details of owners of the goods and a contact number. This is so that where a driver is engaging in acts that put road users at risk, the police can contact the owner of the goods to inform them of these activities and to stop the truck. The police would be in a position to advise the owner that he or she would need to engage alternative transport for the goods. A reference would automatically logged with the RTA and LDTSA so that records of the incident are collected and further investigative action taken where warranted.

From Police perspective this enables them to address the immediate risks posed by safety breach in a direct and proactive manner that places the burden of compliance with the operator/owner as distinct from the issuing of an infringement notice which may have little deterrent effect. From a broader policy perspective this assures that the safety risk to the

community and the driver are dealt with in a direct and immediate fashion rather than via an indirect financial penalty or belated prosecution. Some may view stopping a truck as a drastic step, but it can be defended both on public safety grounds and in terms of the message that such actions will send back to the transport company and load owner, and the capacity for them to take remedial action. In contrast, the current situation is that the load owner may be totally unaware that the driver of the truck delivering their goods has been charged with 'out of hours' or other offences relating to their logbook or are, for example, driving a defective vehicle at speed.

7.7 Protection for contractors and drivers who refuse to engage in unsafe working practices

Evidence given to the Inquiry included a disturbingly large number of cases where drivers and trucking companies were threatened with cancellation of contracts if they were not willing to engage in practices that are unsafe. Some of the submissions to the Inquiry indicated a level of indifference/ruthlessness on the part of some consignors/freight forwarders and load owners/customers that one would not expect in a civilised community. No driver or operator should be placed in a situation where they are threatened with economic or job loss unless they meet schedules etc that breach safety or other laws. The Inquiry therefore recommends that appropriate legislation be put in place to protect owner/drivers, contractors, company operators and others who are threatened with termination of contracts on account of their refusal to engage in any practices. It also recommends that allegations of such threats be vigorously investigated and, if proved, prosecuted by the Long Distance Trucking Safety Authority.

7.8 Road user education in relation to heavy vehicles

A limited understanding of the very different turning, handling and overtaking characteristics of heavy vehicles amongst other drivers clearly exacerbates the risk of death and serious injury on our major highways. Consideration should be given to improving road user understanding of sharing the road with heavy vehicles, including those issues most relevant to safety such as overtaking/length, turning characteristics of long/articulated vehicles and breaking distances. The addition of these issues in driver education and license testing should be considered as well as support for programs such as the National Sharing the Roads with Heavy Vehicles scheme.

7.9 Driver Training

The Inquiry finds that current driver training methods should be evaluated with a view to identifying deficiencies and to also to provide a basis for progressive enhancement of driver competencies. Driving a truck should be regarded as a life long learning experience, with periodic re-testing and upgrading of skills.

7.10 Workers' Compensation and Entitlements

This Inquiry found clear evidence that many long haul truck drivers are inadequately protected in the case of serious injury at work. A significant number of owner/drivers carry no private insurance or workers' compensation cover and others are unaware of their entitlements. Amongst employee drivers, a substantial number of those in small fleets had little knowledge of their entitlement to workers' compensation and some were afraid to make claims due to fear of losing their job or active discouragement on the part of some transport companies. It is recommended that WorkCover NSW take measures to address these issues, by raising awareness of entitlements (or the need to have some insurance cover in the case of owner/drivers). Further, WorkCover should investigate complaints of active claim

suppression by some companies as well as undertaking an random audit designed to detect such illegal practices.

7.11 Heavy Vehicle Mass, Configuration and Vibration

Without ignoring differences in truck configuration between Australia and the USA, recent US findings suggest the health and safety implications of longer/larger and heavier trucks and particular trailer configurations require more serious consideration, unless it can be shown the Australian research has taken all the above-mentioned factors into account. The Inquiry was unable to investigate this matter fully but believes it warrants further investigation along with the effects of changes in vehicle configuration to vibration, braking, and suspension raised by Dr Arnold McLean. It therefore recommends that the RTA investigate both issues and report its findings to the relevant minister.

7.12 Parking Bays/Rest Areas

The RTA should involve industry associations and the TWU in developing and implementing an action plan on the upgrading of parking bays/rest areas. Measures for enhancing the quality/suitability of food, comfort and rest afforded by roadhouses should also be explored.

7.13 A Final Note on Interstate/National Coordination

The effectiveness of a number of the recommendations made by this Inquiry would undoubtedly be enhanced were they to be introduced at a national level. Many of the problems identified by this Inquiry (such as problems with logbooks, drug use, excessive hours, speeding and inter-agency coordination) are not peculiar to NSW. The Inquiry received considerable assistance from other jurisdictions, which helped it to identify common problems as well as identifying several promising initiatives in other states (a number of which are detailed in the main body of the Report). It is the view of this Inquiry that the current national framework fails to effectively address commercial practices which are a critical factor underlying unsafe practices in the industry. The Inquiry would urge that the NSW Government seek cooperation from other states and territories, as well as the federal government, to advance the major recommendations of this Inquiry. Even cooperation amongst the three eastern seaboard states would be sufficient to effect a significant change, as this would encompass at least 90% of the long distance trucking industry. The appended legal advice to this Inquiry (Appendix 2) canvasses a number of methods of achieving national coordination of key recommendations made by this Inquiry.

Safe Driving Plan/Safe Driving Method Statement

DRIVER / OPERATOR DETAILS	RATES TO BE PAID	INSURANCE DETAILS
Name of **Driver** and address of driver	Provide details of rates paid.....	Provide Insurance details of vehicle (Include name of Insurer, amount insured, policy number and policy expiration date
.....	Agreed Rate to be paid within 14 days $ amount	
Drivers licence number and class	.....	Amount Insured.....
	Demurrage Rate applies after waiting one hour after arrival.	
Operators licence details	Paid by the hour	Policy number.....
		Policy expiry date.....
Name and Contact details of **Owner** of vehicle including operator licence		
Name and contact details of **Customer** including operator licence details		

DETAILS OF TRIP

Trip From: .....

Trip To:.....

Route to be taken.....

.....

Kms on Speedo at start of trip.....

Departure time

Estimated Arrival time .....

Sender to sign .....

Kms on Speedo at time of arrival .....

Actual arrival time.....

Total Time taken for rest breaks

Receiver to sign.....

Details of Trips completed over 100kms in the last 24 hours

.....

Has the driver had a 6 hours continuous break in the last 24 hours? ..

Details of local Trips completed in the last 24 hours (less than 100kms) including loading and unloading times

Has the Driver had 2 rest breaks in the last 12 hours including one 30minute break outside the vehicle?

.....

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WRITTEN SUBMISSIONS AND HEARINGS

Written Submissions and Correspondence

The following list includes all those organisations and individuals who made written submission to the Inquiry. In addition, a number of persons provided written information to the Inquiry, often after a request from the Inquiry chair arising from issues raised during hearings. Cases where such material was provided but it was not an adjunct to a formal written submission have been marked with an asterisk (*).

Anderson, Jason, Sydney

Angus, R. General Manager Boral Transport, Chairperson NSW Road Freight

Australasian Railway Association, Melbourne Victoria.

Australian Retailers Association,

Australian Trucking Association,

Aylott, Adrian, Canberra ACT

Booth, Dallas Insurance Council of Australia

Braddy, P. Minister for Employment, Training and Industrial Relations, Queensland correspondence to Inquiry, 1 September 2000.

Brightwell, Ian

Buckland, Ian,

Caine, Sonia, Mosman Park, Western Australia,

CHIPSTOP, Campaign to end woodchipping the south east and east Gippsland forests, Bega,

Concerned Families of Australian Truckies Association (CFAT)

Courtney, Michelle Cambridge Gardens NSW.

Croke, Dean, Allianz Australia, Canberra, (note this submission was essentially identical to that presented to the House of Representatives Standing Committee on Communications, Transport and the Arts Inquiry into Fatigue in the Transport Industry.

Driscoll, Owen, National Transport Insurance (NTI) Ltd.

Eaglesham, Wally, Managing Director, Rocky's Own Transport Co., Rockhampton, Queensland.

Edwards, Cheryl Minister for Labour Relations, Western Australia. Correspondence to Inquiry , 17 August 2000.*

Environmental Protection Authority of New South Wales, Sydney (Lisa Corbyrn, Assistant Director General [Operations],28 June 2000).

Evans, Inspector David J, Traffic Services Branch, NSW Police Service

Fisher, Mary Jo, Senior Adviser to the Minister for Employment, Workplace Relations and Small Business, Australia, 8 November 2000.

FreightCorp (Freight Rail Corporation), Parramatta, New South Wales

Garske, Peter Executive Director, Queensland Trucking Association.

Grundstein, Associate Professor Ron and Desai, Dr Anup, sleep researchers, Royal Prince Alfred Hospital, Sydney, 7 August 2000

Hannifey, Rod. B-Double tanker driver, Dubbo, NSW

Harris, Robert J. Harcrow Haulage, Broadmeadow, South Australia, 3 May 2000.

Hassall, Kim Australia Post, Melbourne

Herridge, Mark Queensland

HSAG, Highway Safety Action Group of NSW Inc, *Submission to Safety Inquiry into Long Haul Trucking Industry*, (Claire Braund, secretary and Colin Barnes, president).

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Laird, Associate Professor Philip, School of Mathematics and Statistics, University of Wollongong, 1 May 2000.

Lambert, J. MIEAust, CPEng, John Lambert and Associates, Victoria

Lennon, Paul. Deputy Premier/Minister for Infrastructure, Energy and Resources, Tasmania correspondence to Inquiry, 5 September 2000.*

Lawson, Robert Minister for Workplace Relations, South Australia, correspondence to Inquiry 13 October 2000,*

McInerney, Fay, wife of owner driver and business manager, Tumut, New South Wales

McIntyre, Bob, recently retired highway patrol police officer, Springwood, New South Wales.

McLean, Dr Arnold, Department of Mechanical Engineering, University of Wollongong,

Martin, MA, coach driver, Nelson Plains, New South Wales.

May, John, Urunga, NSW

McDonald, W. Director General of NSW Department of Industrial Relations, correspondence to Inquiry, 25 August 2000*

National Rail Corporation, Parramatta NSW

New South Wales Road Transport Association

Nolan, Darren Quality/Development Manager, Nolan's Interstate Transport, Gatton Queensland.

NRMA Ltd, June 2000 (Stephen Gray, Manager Road Safety)

Pattison, Jan, Lowood, Queensland 14 August 2000.*

Poore, Lance Regional Policy Section, WA Transport

Powric, Bob, Ecosane Systems Company, Southport, Queensland

Queensland Transport (Queensland Department of Transport)

Roads and Traffic Authority of NSW (RTA).

Robertson, Denis Managing Directior, Roadmaster Haulage Pty Ltd Riverstone NSW.

Rolfe, Hylda, author of two discussion papers on public transport for the NSW Minister of Industrial Relations in 1993, New South Wales.

Smith, Ken Smithworks Consulting, Queanbeyan New South Wales.

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Transport Management Australia/Victorian Road Transport Association (VRTA)

Transport Workers' Union of Australia,
New South Wales Branch (Tony Sheldon, Secretary)
National Office (John Allen, Secretary)
Queensland Branch (Hughie Williams, Secretary)

John Vallance, MMI Insurance/Allianz Australia.

Victorian WorkCover Authority

Western Australian Transport, Perth, Western Australia. (Poore, Lance Regional Policy Section, 20 June 2000)

WorkCover Authority of New South Wales, Sydney.

Hearings and Meetings (asterisk* where only met informally)
(multiple representatives for organisations are grouped under their organisation)

Allot, M.
Wife/business partner of owner/driver, Queensland

Anderson, David
Chief Executive Officer, NatRoad

Angus, Bob
General Manager of Boral Transport in NSW and Chair of NSW Road Freight Advisory Council

Australian Retailers Association
Bill Healy, Executive Director
Michael Davidson, Convenor Occupational Health and Safety
Charles McLaughlin, National Transport Manager, Woolworths Supermarkets*
Craig Hope-Johnstone, NSW Distribution Manager, Woolworths Supermarkets*
Denis Robinson, National Transport Manager, Coles Myer Logistics Pty Ltd*
Chris W Boddington, National Logistics Planning Manager, Franklins Ltd*

Australian Transport Safety Bureau
Chris Brooks, Team Leader, Research Management & Strategy

Australian Trucking Association
Mike Edmonds, National Manager Trucksafe and Communications
Alexandra Jovanovic, Media Officer
Jan Pattison, councillor & owner/driver representative

Baker, Brett
Truck driver, Hunter Valley

Belzer, Michael H
Institute of Labor and Industrial Relations, University of Michigan, Ann Arbor Michigan, United States of America

Bennetts, Lyn
wife/business partner owner/driver, northern Victoria

Bierrman Steve,
Owner/driver, Victoria

Blanchard, Michael
Small fleet operator, Grafton.

Booth, Dallas,
General Manager Statutory Classes, Insurance Council of Australia

Bremer, Peter
Truck driver/business operator, Hunter Valley, NSW

Brew, Garry
Advance Driver Education, Albury

Brimley, Keith
Owner/driver Victoria

Brown, Jan
TL Brown Transport Pty Ltd, Lowood Queensland

Brown-Sarra, Jerry
Roadsafe Consultants on Transport Driving Practices and Knowledge, Moama NSW

Collins, Linette
Operational Programs Branch, NSW Police Service*

Commonwealth Department of Transport and Regional Services
Robert Hogan, Assistant Secretary Land Policy Branch

Concerned Families of Australian Truckies (CFAT)
Coral Davidson, Co-ordinator, Newcastle Branch
Margaret Douglas, Grafton branch secretary
Monica Gilbert
Judith Penton
Anne Rose, Co-ordinator, Grafton branch
Liz Weston Co-ordinator Goulburn Branch
Neena Wilson, Goulburn secretary

Croke, Dean
Managing Risk Consultant Heavy Motor, MMI/Allianz Australia, Canberra

Cunningham, Adam.
Senior Research Officer, House of Representatives Standing Committee on Communication, Transport and the Arts, Canberra

Davidson, Wayne
Owner/driver, Newcastle

Dentler, Jan,
Wife of truck driver, Northern NSW

Douglas, Ken
Owner/driver, Northern NSW

Eaglesham, Wally,
CEO Rocky's Own Transport Company, Rockhampton, Queensland.

Environmental Protection Authority NSW
Alan Ritchie, Manager Dangerous Goods*

Evans, Dave
NSW Police Service, 20 July 2000

Faulkes, Ian
Director, STAYSAFE – NSW Parliament Joint Standing Committee on Road Safety

Ferguson, David,
Former RTA inspector, 16 August 2000

Garske, Peter
Executive Director, Queensland Trucking Association, Brisbane.

Grabyn, Bob
Owner/driver, Victoria

Graham, Vince
Managing Director, National Rail Corporation Ltd, Sydney*

Hill, David
Research Officer, Australian Railway Association Inc. Melbourne

Hooper, Greg,
Insurance investigator, Melbourne

Hopkins, Tony
Small fleet operator, Northern NSW.

Jones, Melissa,
Truck driver, central coast NSW

Kelly, John
NTI, insurance industry, 14 July 2000.

Khan, Lloyd,
Logging truck driver, Northern NSW.

Kirkwood, Roger
Trainer and driver

Laird, Phillip
Associate Professor, School of Mathematics and Applied Statistics, University of Wollongong

Livestock Transporters Association of NSW
Robert Gunning, Executive Officer
Bob Richardson, President

Lovel, Philip
Executive Director, Victorian Road Transport Association Inc. Melbourne

Lou, Father
St Mary's Catholic Church, Grafton

McInerney, Fay
wife/business partner owner/driver Tumut NSW

McLean, Dr Arnold
Department of Mechanical Engineering, University of Wollongong

Mahon, Gary
Director, Road Use Management and Safety, Queensland Transport, Brisbane

MMI Insurance
John Vallance, Product and Marketing Manager

National Road Transport Commission
Barry Moore, Director - Strategy
Kirsty McIntyre, Senior Project Manager

National Transport Insurance Ltd
Owen Driscoll, National Marketing Manager
John Kelly, Risk Manager

New South Wales Road Transport Association Inc.
Geoff Tinney, Executive Director
Terry Dene, Director Commercial*
Rory Glass, Executive Officer, Refrigerated Warehouse and Transport Association of Australia Ltd*

Nolan's Interstate Transport
Darren Nolan, Quality/Development Manager

NRMA Ltd
Alex Sanchez, Director

NRMA Insurance Ltd
David Piper, National Manager CTP Product
Pamela Leicester, Injury Prevention Manager

Nugent, Les Regional Traffic Co-ordinator, NSW Police, Albury

Paton, Graham, owner/driver southern NSW.

Pickles, Robert WA Pickles Transport, Albury

Roads and Traffic Authority of New South Wales
Donald Carseldine, Manager, Licensing Policy
Gary Corben, Unit Manager, Policy Implementation
Justin McGuire, Manager Regulation Strategy
Les Neilinga
John Brewer
David Allen

Robertson, Denis
Managing Director, Roadmaster, Riverstone NSW.*

Rose, AE
Highway Piloting, Grafton NSW.

Schausinger, Steve
NSW Police Highway Patrol Officer, based at Holbrook, NSW.

Sepos, Joe
Managing Director, JS Group of Companies, Heatherbrae NSW

Smith, Ken
Smithworks Consulting, Queanbeyan

Tacon, Ian
Small fleet operator

Toll Express
Larry O'Regan, National Sales Manager
Phillip Crook, General Manager Linehaul

Tow Truck Authority of New South Wales
Frances Marshall, General Manager
Peter Anderson, Chair, Tow Truck Authority Board

Transport Management Australia, Melbourne
Peter Robinson, Managing Director
Roger Sanders, Transport Safety Advisor

Transport Workers Union of Australia
Jim Bray, President, NSW Branch
Scott Connolly, Executive Officer, NSW Branch
Mark Crossdale, Newcastle Branch
Warwick Irvine, Official, NSW Branch
Michael Kaine, Legal Officer, NSW Branch
Mal Fraser, Organiser Vic/Tas Branch
Nathan Niven, Vic/Tas Branch
Barry Shaw, NSW Branch delegate Linfox Minchinbury
Tony Sheldon, Secretary, NSW Branch
Andrew Whale, ACT/Southern NSW Branch

Vallance, John
MMI/Allianze Australia, 14 July 2000.

Walker, Terry
Managing Director, Walker's Transport Wodonga, Victoria

WorkCover New South Wales
Jenny Thomas, team manager RWTS
Tara McCarthy, team coordinator, RWTS invesitgations
Ian Smith, project officer

Zurich Financial Services Australia Ltd
Shelley Broxom, Underwriting and Pricing Manager

APPENDICES

Appendix 1

Terms of reference and information distributed to interested parties

Safety Inquiry into Long Haul Trucking Industry

Call for Written Submissions

The Motor Accidents Authority of New South Wales is co-ordinating and funding an Inquiry into safety in the long haul road transport industry.

The aim of the Inquiry is to produce a report on safety in the industry, including occupational problems. The report will include a Draft Code of Practice for improving safety in the long haul road transport industry as well as recommendations on changes to regulation, compliance infrastructure and policies where appropriate.

The inquiry will be undertaken by Professor Michael Quinlan, School of Industrial Relations and Organisational Behaviour, University of New South Wales. A steering committee has been established consisting of representatives of the Motor Accidents Authority, Roads and Traffic Authority, WorkCover NSW, Transport Workers Union and the Australian Trucking Association. The inquiry will have the following terms of reference;

1. Impact of clients' and consignors' requirements on the drivers including:
    - Industry tendering practices;
    - Transport contacts between road transport companies and major clients;
    - Methods of pricing;
    - Lack of client responsibility for driving hours, driver performance and remuneration for drivers;
    - Client/consignor requirements as to delivery times.

2. Extent of proper enforcement in the industry of driving hours, speeding and drug use.

3. Current forms of regulation in the industry, whether a self-regulation or external regulation model is most appropriate for the road transport industry and what forms this should take.

4. Whether current regulatory bodies with responsibility for the industry are properly co-ordinated with each other and sufficiently resourced.

Written submissions from interested parties are requested. The closing date for submissions is 21 June 2000.

For further information contact: Mr Leicester Ramsey Ph 0419214726, email yesmar@internet-australia.com Written submissions should be sent to: Professor Michael Quinlan, School of Industrial Relations and Organisational Behaviour, University of New South Wales, Sydney NSW 2052. Ph 93857149, Fax 96628531, email **m.quinlan@unsw.edu.au**

Appendix Two

Safety Inquiry into the Long Haul Trucking Industry - Legal Issues

Richard Johnstone

11 October 2000

This document outlines approaches to some of the legal issues that have been raised in the New South Wales *Safety Inquiry into the Long Haul Trucking Industry*. In particular, it:

(i) examines whether the *Occupational Health and Safety Act 2000* (NSW) (OHSA(NSW)) imposes general duty obligations upon load owners and trucking companies;
(ii) compares the "chain of responsibility" provisions under the NSW road transport legislation with the general duties under the OHSA(NSW);
(iii) outlines suggestions for the regulation of the proposed safe driving plan requirement;
(iv) discusses issues in the development of uniform minimum rates awards; and
(v) canvasses issues involved in establishing a long haul trucking inspectorate.

1. Long Haul Truck Safety and the General Duty Provisions in the *Occupational Health and Safety Act* 2000 (NSW)

Although often seen as primarily a road safety issue, safety in the long haul trucking industry is just as appropriately conceptualised as an OHS issue. Indeed, given the broad contextual issues that have an impact on truck safety (particularly economic pressures on drivers to drive long hours, at fast speeds, and under the influence of drugs), the *Occupational Health and Safety Act* 2000 (NSW) (OHSA(NSW)) provides a particularly good framework for regulating long haul truck safety.

Standard setting in the OHSA(NSW) hinges around a set of "general duties", covering all parties having an impact upon OHS. These are supplemented by regulations and codes of practice, which adopt a combination of performance, process and specification standards. "Performance standards" define the duty holder's duty in terms of goals they must achieve, or problems they must solve, and leaves it to the initiative of the duty holder to work out the best and most efficient method for achieving the specified standard. "Process requirements" prescribe a process, or series of steps, that must be followed by a duty holder in managing specific hazards, or OHS generally. They are often used when the regulator has difficulty specifying a goal or outcome, but has confidence that the risk of illness or injury will be significantly reduced if the specified process is followed. A typical example of a process requirement is the hazard identification and risk assessment process incorporated into many OHS regulations and codes of practice. Process-based standards have spawned greater reliance on "documentation requirements". Increasingly OHS statutes are requiring duty holders to document measures they have taken to comply with process-based standards, performance standards and principle-based standards. The safe driving plan proposed in the inquiry's main report is an example of a documentation requirment. "Specification" or

"prescriptive" standards tell duty holders precisely *how* to control hazards by setting out the specific types of safeguarding methods or procedures to be adopted, or the practices to be refrained from, in specific situations.

"General duties" are often confused with performance standards, but they are quite different in their approach. Unlike performance standards, the general duty provisions do not specify goals. Rather they require the duty holder to exercise reasonable care in establishing and implementing safe work systems. Following the pattern in all of the Australian OHS statutes, the OHSA(NSW) imposes general duties on a range of duty holders, including employers, self-employed persons, employees, controllers of premises, manufacturers, suppliers and importers of plant, equipment and substances, designers, erectors and installers of plant and equipment. Each of these parties owes a "general duty", and the duties are owed to a number of different persons.

There is considerable overlap between the general duties owed by the various parties. It is well accepted that in any one work system, more than one general duty can be owed simultaneously, by one or more parties. For example, a person may owe a duty as an employer to employees, and to non-employees, and may also owe a duty as a controller of workplace, and/or as a designer of plant used in the workplace. At the same time, a contractor engaged by the employer may owe a duty to its own employees, the employer's employees, and other contractors and their employees. The fact that one person has breached a general duty does not provide a defence for a second person charged with a contravention of another general duty based on the same facts (OHSA(NSW) section 29(1)).

In a sense, the OHSA(NSW), similar to the *Road Transport (Safety and Traffic Management)(Driver Fatigue) Regulation* 1999 (NSW) (discussed in 3. Below), makes provision for "chain of responsibility" regulation of the long haul trucking industry. That is, it imposes duties on a range of parties involved in the road trucking contractual chain. This advice will first describe the relevant general duties, and will then show how they apply to the long haul road transport industry.

Section 8(1) of the OHSA(NSW) (formerly section 15 of the *Occupational Health and Safety Act* 1983 (NSW)) provides that an "employer must ensure the health, safety and welfare at work of all the employees of the employer."

Section 8(2) provides that employers "shall ensure that persons (other than employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the undertaking while they are at the employer's place of work." Section 9 imposes a similar duty on self-employed persons. (Both of these duties were set out in section 16 of the 1983 Act). A "self-employed person" is defined in section 4 to be "a person who works for gain and reward other than under a contract of employment or apprenticeship, whether or not employing others.

Section 10(1) provides that "a person who has control of premises used by people as a place of work must ensure that the premises are safe and without risks to health." Section 10(2) requires a "person who has control of any plant or substance used by people at work" to "ensure that the plant or substance is safe and without risks to health when properly used." Similar provisions were found in section 17 of the 1983 Act. The provision may apply to consignors or trucking companies who make an unsafe workplace (for example, a loading area, or a truck) available to a self-employed truck driver.

Finally, section 11(1) provides that "a person who designs, manufactures or supplies any plant or substance for use by people at work must (a) ensure that the plant or substance is safe and without risks to health when properly used, and (b) provide, or arrange for the provision of,

adequate information about the plant or substance to the persons to whom it is supplied to ensure its safe use." The equivalent provision in the 1983 Act was section 18.
Section 20 (formerly section 19 of the 1983 Act) imposes a duty on employees to take reasonable care for the health and safety of people at the employee's place of work.

These provisions lay down non-delegable absolute duties[1] on employers, self-employed persons and others, subject only to the defence in section 28 that "it was not reasonably practicable for the person to comply with the provision, or that the commission of the offence was due to factors over which the person had no control and against the happening of which it was impracticable for the person to make provision."

It is important to note that proof of a general duty offence "is not dependent on there having been an accident and injury to an employee" or any other person to whom the duty is owed.[2]

Applying these provisions to the long haul transport industry, section 8(1) clearly imposes a general duty of care upon long haul trucking companies in relation to their own employee truck drivers. Where trucking companies carry out their operations using their own employee truck drivers, then section 8(1) requires the company to ensure that the conditions under which their employee drivers work are, as far as is reasonably practicable, safe and without risks to their health. Technically, an owner operator who incorporates his or her business, so that she or he is one of the controlling shareholders and directors of the company which runs his or her business, can be employed by the company so that the company, as employer, owes a duty to the owner operator as an employee.

The OHSA(NSW) also makes provision for offences by directors and managers of corporations. Section 26 provides that when a corporation contravenes any provision in the Act, including a general duty, each manager and director of the company is taken to have contravened the same provision unless that person satisfies the court that she was not in a position to influence the conduct of the corporation in relation to the contravention, or, being in such a position, used all due diligence to prevent the contravention by the corporation. In the case of owner drivers who incorporate their business, this might mean that a breach of the employer's general duty to them, as employees, under section 8(1) might then be imputed to the directors under section 26, with the result that the owner driver and his or her fellow directors (often a spouse) might be liable for the offence.

As the main report resulting from this inquiry points out, much, if not most, of the New South Wales' long haul truck work is carried out by owner drivers engaged as contractors by trucking companies, or engaged directly by clients and consignors. As the main report notes, in many cases clients and consignors impose conditions upon drivers (whether or not they are in a direct contractual relationship with drivers) which are not conducive to safe loading or driving practices. Does the OHSA(NSW) cover trucking companies in relation to owner drivers engaged by the trucking company? Do the provisions in the OHSA(NSW) impose OHS obligations upon clients or consignors of transport companies or owner drivers?

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1 *See Carrington Slipways Pty Ltd v Callaghan* (1985) 11 IR 467*; State Rail Authority of New South Wales v Dawson* (1990) 37 IR 110; *Boral Gas (NSW) Pty Ltd v Magill* (1995) 58 IR 363; *Chugg v Pacific Dunlop Ltd* [1988] VR 411 at 415; *R v British Steel plc* [1995] 1 WLR 1356; *R v Associated Octel Co Ltd* [1996] 4 All ER 846; *Austin Rover Ltd v Inspector of Factories* [1989] 1 WLR 520 at 523*; R v Board of Trustees of the Science Museum* [1993] ICR 876; *R v Gateway Foodmarkets Ltd* [1997] 3 All ER 78 at 81 and 82.

2 *R v Australian Char Pty Ltd* (1996) 64 IR 387 at 400; and *Haynes v C I and D Manufacturing Pty Ltd* (1995) 60 IR 149 at 158.

The key provisions in this regard are sections 8(2) and 9(1). As noted above, they impose obligations upon employers and self-employed persons in relation to persons other than the employer's employees. The duty is to ensure that such persons are not exposed to risks to their health and safety arising from the conduct of the employer or self-employed person's undertaking.

Depending on whether they fall within the category of "employer" or "self-employed person", clients or consignors will either owe a duty to truck drivers under section 8(2) or section 9(1). Either clients or consignors will employ their own employees to carry out their everyday operations, in which case they are "employers" for the purposes of section 8 of the OHSA(NSW),[3] or clients or consignors will be self-employed persons, and will owe the duty under section 9. Sections 8(2) and 9, in effect, require employers and self-employed persons to ensure that self-employed truck drivers, while at the client's or consignors's workplace, are not exposed to risks to their health and safety arising from the conduct of the client/consignor's undertaking. In exploring the scope of the consignor/client's duty, three key expressions in sections 8(2) and 9(1) need to be examined.

First, the expression "exposed to risks to their health and safety" has been generously interpreted by the English Court of Appeal in *R v Board of Trustees of the Science Museum.*[4] Noting the preventive aims of the OHS legislation, the court said that the ordinary meaning of the word "'risks' conveys the idea of a possibility of danger", [5] rather than narrower meaning of "actual danger". "The word 'exposed' simply makes it clear that the section is concerned with persons potentially affected by the risks." [6] In other words, the person owed the duty does not have to suffer injury or ill-health, but rather need only be exposed to a significant risk of injury or ill-health. "It is not necessary … that actual injury or defect to health ensue".[7]

The other key expression is "conduct of the undertaking". It is well established that in New South Wales there must be a causal relationship between the alleged breach and the fact of detriment to safety, not between the undertaking and the hazard.[8] In the Victorian Supreme Court decision in *Whittaker v Delmina Pty Ltd*[9] Hansen J in said that the Victorian equivalent of section 8(2) "applies to potential risks to health or safety that arise from the conduct of an undertaking even if those risks may be present or operate outside the place at which the undertaking is conducted." The expression "conduct of the undertaking" not limited to the operation of industrial processes, and includes ancillary matters, such as cleaning, repairing and maintaining the plant, obtaining supplies and making deliveries,[10] as well as trading, and

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3 In *Rech v F M Hire Pty Ltd* (1998) 83 IR 293 the Industrial Relations Commission of New South Wales in Court Session held that it had not been proved to the satisfaction of the Commission that Nomel Pty Ltd employed any employees at all. The evidence suggested that Nomel Pty Ltd hired labour and equipment from others, with the management function also being performed by an independent contractor. The Commission referred to decisions such as *Hutton v West Cork Railway Co* (1883) 23 CH D 654 at 671-672 and *Re Halt Garage (1964) Ltd* [1982] 3 All ER 1016 at 1027 as establishing that a director of a corporation is not, without more, an employee of the corporation.

4 [1993] ICR 876.

5 [1993] ICR 876 at 882.

6 [1993] ICR 876 at 882.

7 Hansen J in *Whittakerv Delmina Pty Ltd* (1998) 87 IR 268 at 281.

8 See *CSR Limited t/as CSR Wood Panels v WorkCover Authority of New South Wales (Inspector Reid)* unreported, Industrial Relations Commission of New South Wales (Bauer J) 10 August 1995, at 25.

9 (1998) 87 IR 268 at 281.

10 *R v Associated Octel Co Ltd* [1996] 4 All ER 846 at 851-852; *R v Mara* [1987] 1 WLR 87.

supplying and selling to customers.[11] The courts have rejected the argument that an activity carried out by an independent contractor is not part of the conduct of the undertaking if the employer or self-employed person engaging the contractor does not have control over the activity.[12] The expression "conduct of the undertaking"

> is broad in its meaning. … [I]t means the business or enterprise of the employer … and the word "conduct" refers to the activity or what is done in the course of carrying on the business or enterprise. A business or enterprise … may be seen to be conducting its operation, performing work or providing services at one or more places, permanent or temporary and whether or not possessing a defined physical boundary. The circumstances may be as infinite as they may be variable. .. [The] word "undertaking" should not be read as synonymous with "workplace". It is neither helpful nor necessary to do so. [13]

From this it is arguable that all trucking activities (including consignment and transport arrangements affecting driver behaviour) would form part of the "conduct of the undertaking" of a consignor or client of a trucking company or an owner driver.[14] In other words, the transportation of the client or consignor's goods from its premises to other premises would easily come within the meaning of "conduct of the undertaking". Thus, where it can be shown that there is a causal nexus between activities involved in the *conduct of the client's undertaking* (scheduling loading of trucks, not taking loading, unloading or local delivery times into account when drawing up schedules, requiring journeys to be done in too short a period of time, requiring drivers to wait for long periods before being loaded with goods, low levels of remuneration, requiring drivers to drive too fast or for long periods without rest etc) and *risks* to the health and safety of drivers (from fatigue, drug use, speeding etc), then prima facie there has been a contravention of the duty.

An effective regulatory regime for long haul trucking would require clients or consignors to identify all hazards involved in *all phases* their operations (including road transport activities conducted by contractors), and the assessment and control of all risks. In short, this would include routine risk assessment of all aspects of transport operations. Sections 8(2) and 9 of

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11 *Sterling-Winthrop Group Limited v Allen* (1987) SCCR 25, noted in Wright, F, *Law of Health and Safety at Work*, Sweet & Maxwell, London, 1997, 83.

12 *R v Associated Octel Co Ltd* [1996] 4 All ER 846. But see WorkCover Authority of New South Wales advice on "Self-employed workers", dated 7 September, which asserts that "the notion of 'undertaking' suggests some degree of control by the employer over the relevant place of work (the vehicle)." With respect, this is inconsistent with the well-reasoned decision in *Associated Octel*.

13 Hansen J in *Whittaker v Delmina Pty Ltd* (1998) 87 IR 268 at 280-281. Note that the New South Wales Industrial Relations Commission in *WorkCover Authority of New South Wales (Inspector Keenan) v Technical and Further Education Commission* [1999] NSWIRComm 218 (12 May 1999) at 10 took a narrow approach to the expression "conduct of the undertaking" which was regarded (*obiter*) as too narrow approach to the expression by the Full Bench on appeal in *WorkCover Authority of New South Wales (Inspector Keenan) v Technical and Further Education Commission* (1999) 92 IR 251 at 263.

14 But see WorkCover Authority of New South Wales advice on "Self-employed workers", dated 7 September, 2000, which strongly asserts that "in many cases of truly self-employed truck drivers – ie sole traders and partners who own their own truck and operate in a contractual agreement" – will not be covered by any of the provisions in ss 8-11 of the OHSA(NSW). This opinion would appear to take too narrow a view of the meaning of "conduct of the undertaking". See further the discussion of the requirement of the employer's place of work below for a genuine restriction on the duty.

the OHSA(NSW) would appear to a good statutory vehicle for this approach, and support such an approach.

There is, however, a significant limitation on the scope of the employer (or self-employed person's) duty in sections 8(2) and 9 of the OHSA (NSW). The duty is owed **to** non-employees (truck drivers) only "while they are ***at*** the employer or self-employed person's place of work." "Place of work" is defined in section 4 to be "premises where persons work." "Premises" are defined to include "any land, building or part of a building, or any vehicle, vessel or aircraft…" The expression "place of work" has been scrutinised by the courts[15]. The leading cases on the meaning of the expression in the OHSA(NSW) make it clear that the expression includes every area which may be affected by the work being done.[16]

In other words, it is arguable that consignors and clients owe duties to drivers under sections 8(2) and 9(1) only while drivers are *at* the consignor's "place of work". Even though this geographical limitation (which is not to be found in the corresponding Victorian and Queensland provisions) severely restricts the scope of section 8(2) in its application to the relationship between consignors and drivers, it might be argued that this duty still encompasses important aspects of the loading and transport of freight. The duty refers to the "exposure" of drivers to risks while at the employer's place of work. It clearly covers the way in which goods are loaded onto trucks at the employer's place of work, especially for risks (such as manual handling injuries) during the loading. It also arguably covers situations in which employer activities placing drivers at risk take place at the workplace, even though the risk may only eventuate away from the actual workplace: for example, where drivers are required by the consignor to wait for long periods at the employer's workplace until goods are to be loaded, thus depriving drivers of necessary rest before driving. The crucial issue is whether the risks must actually occur while the driver is at the workplace, or whether the drivers must be at the workplace when the relevant parts of the undertaking are being conducted. On the face of the statute, this is not clear. The most restrictive interpretation, and the interpretation which seems to most accepted, is that the duty is only owed while drivers are at the workplace. In other words, the section only covers risks at the workplace. But there is a strong argument that the ordinary grammatical meaning of sections 8(2) and 9(1) is that it is the "exposure" to risk only that must occur while the driver is at the consignor or client's workplace. This interpretation would mean that provided the truck driver was at the client's workplace when the activity which exposed the driver to risk occurred (for example, waiting in a queue and being deprived of necessary rest), the duty is owed to the driver. It still would not cover contractual dealings between the client and trucking company engaging the owner driver, or dealings between the driver and the client/consignor while the driver was not at the workplace.

Similar considerations arise in relation to the obligations of a trucking company in relation to contractor owner drivers. Although each case would depend on its particular facts, the truck would in most cases not constitute the trucking company's "place of work", and therefore the company's duty to drivers would be limited to situations where the driver was at the company's workplace, or, taking the broader meaning, when the truck driver was at the workplace when exposed to the risk, even if the risk only materialised away from the workplace.

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15 See Johnstone, R, *Occupational Health and Safety Law and Policy*, LBC Information Services, 1997 at 212-123, and *WorkCover Authority of New South Wales (Inspector Clarke) v Mainbrace Construction Pty Ltd* (2000) 94 IR 451, and *WorkCover Authority of New South Wales (Inspector Keenan) v Technical and Further Education Commission* (1999) 92 IR 251 at 257 and 262.

16 *WorkCover Authority of New South Wales (Inspector Clarke) v Mainbrace Construction Pty Ltd* (2000) 94 IR 451 at 460.

Section 9 would apply to owner/drivers themselves, and would require them to take care for the safety of others (other road users, pedestrians and members of the public) while they are driving their trucks. But, once again, the scope of this duty is clouded by the requirement that the person to whom the duty is owed must be "at the self-employed person's place of work."

The upshot is that the section 8(2) and section 9 duties are compromised in their application to the relationship between consignors and contractor drivers (whether the drivers are employees of a trucking company or owner drivers) because of the geographical restriction to the workplace. And as the discussion in the previous paragraphs has shown, there it is not clear as to what exactly is limited to the workplace – the exposure to risk, or the actualisation of the risk. Even if the better view is that the exposure to risk (not the actualisation of the risk) must take place while the driver is at the workplace, the coverage of the duty is still dependent on whether or not the person who is owed the duty is actually at the workplace when exposed to the risk. This is an inappropriate, and, as the earlier discussion indicates, one that leads to finicky hairsplitting. The section 8(2) and section 9 duties are arguably the most important duties in the OHSA(NSW) for the purposes of regulating long haul truck safety. The provisions are in urgent need of reform.

The need for reform of section 8(2) and 9(1) is apparent when other examples, not related to truck driving, are considered. A person walking past a workplace emitting toxic substances would not be covered by the duty, but the same person would be covered if they set foot on the premises. Home-based workers who are categorised as independent contractors would not be covered by the section 8(2) or 9 duties. Similarly, labour hire workers engaged by a labour hire agency on terms making it clear that the worker is not an employee of the agency, would not be covered by the section 8(2) duty because they would not be working at the labour hire company's place of work. This places workers who are not categorised as employees under a significant and unfair disadvantage when compared with the position of employees.[17]

The requirement that the person to whom the duty is owed to be at the duty holder's workplace is inappropriate in an age of greater work flexibility, when workers are increasingly being engaged (i) in work relationships other than the employment relationship and (ii) are working away from the workplace of the person who has engaged them.

This difficulty does not arise in relation to section 22 of the *Occupational Health and Safety Act* 1985 (Vic) or sections 28(2) and 29 of the *Workplace Health and Safety Act* 1995 (Qld). The Victorian and Queensland provisions are similar to the section 8(2) and 9(1) duties in the OHSA(NSW), except that they are not qualified by the expression "while they are at the employer [or self-employed person's] place of work." These provisions operate most satisfactorily.

Conclusion

The OHSA(NSW) contains a range of general duty provisions which cover the major parties to long haul trucking arrangements. Of particular importance are the general duties in section 8(1) (employers to employees), 8(2) (employers to persons other than employees and 9 (self-employed persons to persons other than employees. These latter two duties have the potential to impose important duties upon trucking companies, clients and consignors in relation to owner drivers, but their operation in this area is severely constrained by the provision in

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17 For a discussion of issues in the categorisation of labour hire workers as "employees" or otherwise, see *Swift Placements Pty Ltd v WorkCover Authority of New South Wales (Inspector May)* (2000) 96 IR 69. For an analysis of the extent of a labour hire agency's duties to employees, see *Drake Personnell Limited v WorkCover Authority of New South Wales ((Inspector Ch'ng)* (1999) 90 IR 432.

section 8(2) and 9 that the duties only extend to persons exposed to risks "while they are at the employer [or self-employed person's] place of work."

Recommendation.

The report resulting from this inquiry should strongly recommend that the expression "while they are at the employer's place of work" should be removed from section 8(2) of the OHSA 2000 (NSW), so that it resembles section 22 of the Victorian Act. Similar amendments should be made to section 9 of the OHSA(NSW) (the self-employed person's duty).

2. Comparison of the Chain of Responsibility" Provisions in the Road Transport Legislation and the General Duty Provisions under the OHSA(NSW)

The previous section outlined the general duty provisions in the OHSA(NSW), and explained how they had the potential to provide a comprehensive regulatory regime for the long haul trucking industry. This section compares these provisions with the corresponding provisions in the road transport legislation in New South Wales.[18]

The road transport "chain of responsibility" provisions are to be found in the *Road Transport (Safety and Traffic Management)(Driver Fatigue) Regulation* 1999 (NSW). These provisions are based upon model provisions developed by the National Road Transport Authority's National Reform process. They replace the provisions of Schedule O of the *Motor Traffic Regulations* 1935 (NSW), and contain provisions designed to minimise the number of road accidents involving heavy trucks (defined in regulation 8(1)) and commercial buses that arise from driver fatigue.

Part 2 of the *Road Transport (Safety and Traffic Management)(Driver Fatigue) Regulation* 1999 provides for offences where drivers' total driving times over a relevant period exceed maximum driving times (12 hours driving per 24 hours, and 72 hours driving a week); total work times over a relevant period exceed specified maximum work times (14 hours in 24 hours); where drivers fail to take required minimum rest times. Maximum penalties are $2200 per offence, and section 129 limits the number of offences that can be committed. "Driving time" and "work time" are defined in regulations 12 and 13. Part 2 does not apply to heavy truck drivers who are registered as driver participants, or are employed by employers registered as an employer participant, in a Transitional Fatigue Management Scheme (TFMS).

Part 3 imposes offences on the driver if the driver is registered in a TFMS and exceeds the maximum driving and work times outlined in the Part; fails to take the minimum rest times outlined in the Part; requires self-employed drivers to manage their driving, and keep proper records; provides for medical examinations; and authorises the Roads and Traffic Authority to attend an approved fatigue management training course etc. The section also imposes obligations on employers who are registered as an employer participant in TFMS (including a "general obligation" in regulation 39 to manage heavy truck drivers so that they can comply with their obligations).

Part 4 regulates driving records. It outlines the requirements for drivers to keep driving records (eg logbooks) for non-local work (ie work outside a 100km radius from the driver's base), and by employers or drivers or self-employed drivers for local work. It also makes provision for inspections of driving records; for employed drivers to provide their employers

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[18] Note that section 6 of the *Road Transport (General) Act* 1999 provides that an Act forming part of the road transport legislation prevails over any other Act or statutory rule to the extent of any inconsistency.

with copies of records of non-local driving work; for the keeping of driving records; and for offences pertaining to driving records.

Part 5 then sets out a series of extended offences upon:

(i) "persons" who request, require or direct, directly or indirectly, a driver to do something thing if the person knows or reasonably ought to know that by complying the driver would be likely to commit a "core driving offence" (listed in section 74 to include offences relating to maximum driving and work times, and minimum rest times in Parts 3 and 4), a driving record offence or a speeding offence;

(ii) consignors (defined in section 11 to be a person who engages another directly or through an agent to transport goods or persons by road, and has possession of the goods before they are transported and is not the employer of the truck driver), not to engage someone to transport goods etc if the consignor knows or ought reasonably to know that by complying with an express or implied condition of the engagement the driver would be likely to commit a core driving offence, a driving record offence or a speeding offence;

(iii) a special obligation on employers not to allow a driver to drive a truck if the employer knows or ought reasonably to know that by driving the vehicle the driver would be likely to commit a core driving offence;

(iv) more specific obligations on employers and responsible employees of employers not to roster, schedule etc driving, rest or work time of an employed driver if the employer etc knows or ought reasonably to know that by in complying with the roster etc the driver would be likely to commit a core driving offence

A breach of any of these provisions subjects the offender to a maximum penalty of $2200. According to the Roads and Traffic Authority's submission to this inquiry, there have been no prosecutions of consignors or clients under these provisions. The principal reason for this inactivity seems to be the difficulty of obtaining evidence of the client or consignor's "knowledge" the likelihood that the driver would commit the specified offences (see above). In addition, disaffected drivers are unlikely to give evidence of breaches in court, for fear of implicating themselves in offences, or of blacking their name in the industry.

The provisions in the *Road Transport (Safety and Traffic Management)(Driver Fatigue) Regulation 1999* are not drafted in the same style as the modern Australian OHS statutes, which, as noted in 1. above, combine principle-based general duty provisions with performance (specified goals to be achieved) and process-based (usually hazard identification and risk assessment and control) regulations. The current Road Transport provisions are narrower in scope, more akin to the old-style prescriptive OHS obligations which preceded the modern, Robens-style enactments. It should be noted, however, that there has been discussion of introducing a Fatigue Management Program approach, which would free companies from compliance with prescriptive driving, work and rest limits, and would instead require operators to demonstrate that they had implemented systems properly to manage driver fatigue.

However, at the moment, none of the Road Transport provisions outlined approximate the general duty provisions in the OHS legislation, although the consignor duty comes closest, and is more extensive in the driver fatigue regulations than is section 8(2) of the OHSA because it is not, unlike section 8(2)) confined to the consignor's workplace. The consignor duty, though, is limited the express or implied conditions of the engagement which induce the driver to commit certain road transport offences, and does not impose a general duty of care upon the consignor to ensure the safety of truck drivers engaged. In addition, as noted above, the Part 5 extended offences require evidence of subjective or constructive knowledge, which

has provided to be an impediment to their enforcement. The OHSA(NSW) general duties, on the other hand, are absolute liability offences, subject only to the reasonable practicability defence.

Further, as noted above in 1., section 26 of the OHSA(NSW) provides that when a corporation contravenes any provision in the Act, including a general duty, each manager and director of the company is taken to have contravened the same provision unless that person satisfies the court that she was not in a position to influence the conduct of the corporation in relation to the contravention, or, being in such a position, used all due diligence to prevent the contravention by the corporation. The equivalent provision in the *Road Transport (General) Act 1999* (section 42) is much more difficult to prosecute, as it requires the director or manager to "knowingly authorise or permit the contravention."

Finally, the penalties for contraventions of the OHSA general duties far exceed the maximum penalties for the road transport offences ($2200, although it should be noted that Part 3 Divisions 7 and 8 of the *Road Transport (General) Act* 1999 also empowers a court to make a number of other orders, including compensation for damages and other losses and impounding or forfeiture of vehicles). Contraventions of the general duties in sections 8 to 11 of the OHSA (the employer's, self-employed persons and designer's, manufacturer's etc duties) are $550,000 for a corporation ($775,000 for a further offence) and $55,000 for an individual ($77,500 for a further offence). Further, the OHSA(NSW) also provides for other important sanctions for duty holders convicted of contraventions of the general duties, in the form of court orders that the offender take steps necessary to remedy any matter caused by the commission of the offence (section 113), orders that the offender publicise the offence, penalty and related matters (section 115) and orders that offenders undertake OHS projects (section 116). In short, the OHSA(NSW) provides for much tougher, and more flexible, sanctions that are available under the road transport legislation.

This comparison of the provisions in the road transport regulations and in the OHSA(NSW) clearly shows why the OHSA(NSW) needs to play an important part in the regulation of long haul trucking. The impact of the OHSA(NSW) will be enhanced if the suggested reforms to sections 8(2) and 9 outlined above are implemented.

Conclusion

The road transport "chain of responsibility" provisions are to be found in the *Road Transport (Safety and Traffic Management)(Driver Fatigue) Regulation* 1999 (NSW). Inter alia, they impose maximum driving and work hours, and minimum rest times, upon drivers; and provide for offences where "persons", "consignors" and employers engage in specified activities where the person, consignor or employer "knows, or ought to know" that because of the activity a driver would be likely to commit specified offences. These provisions establish narrower duties than those to be found in the general duty provisions in the OHSA(NSW), discussed above in 1. The flexibility and reach of its general duty provisions, and the larger sanctions, of OHSA(NSW) make it, on balance, the best regime to regulate long haul trucking in New South Wales. These advantages would be enhanced if the recommendations outlined in 1. above were adopted.

3. The Safe Driving Plan and the General Duty Obligations

The proposed safe driving plan would constitute a one page document containing the outcome of a risk assessment in relation to the specified journey, and would indicate the key conditions of the journey, including trip time, pay rates and other safety information. The safe driving plan is essentially a documentation requirement (see 1. above). It is discussed in detail in the main report, and is discussed further in Appendix 1 to the main report.

This advice discusses options for incorporating this mechanism into a regulatory regime. In principle, the safe driving plan should set out a safe plan; copies of the plan must be given to all relevant parties, including the driver, the client/consignor and the trucking company; the driver must comply with the plan; and the trucking company and client/consignor must provide the driver with the conditions to fulfil the requirements of the plan, and must not do anything to divert the driver from following the plan.

In order to implement this approach:

1. *The plan must outline a safe way of conducting the journey*. If, on its face, the plan specifies driving conditions which are unsafe if followed, the relevant legislative provision must provide that the maker of the plan has committed an offence, in addition to the breach of the person's duty (to provide a safe system of work) to the driver, other drivers and members of the public. An approved code of practice, or guidance material, will need to specify the criteria for an acceptable safe driving plan. A safe driving plan is, in practice, likely to be quite simple. It will cover the basic conditions for the journey – the client, trip time, the cartage rate, the departure date, the loading and driving times etc.
2. *All parties associated with the journey (the driver, client/consignor, truck company etc) must have copies of the plan*. It must be an offence for a party not to have a copy of the plan, or for there to be differences in the provisions of the plans held by the various parties.
3. *The driver must comply with a safe driving plan, and the persons responsible for engaging the driver (the transport company and/or consignor) must ensure that the driver complies with the safe driving plan.* Either:

    (a) it must be an offence for a driver not to comply with an acceptable safe driving plan, or for a transport company, consignor or any other party to do anything which induces the driver not to follow a safe driving plan. This should be specified in the legislative provisions establishing safe driving plans. The legislation will have to outline acceptable defences to the alleged offence: for example, if the proposed route is barred due to road construction or maintenance work, natural disaster, or industrial action; or

    (b) *alternatively*, the legislative provisions should specify that failure to have an acceptable safe driving plan, or a failure to abide by an acceptable safe driving plan, is prima facie evidence of a contravention of the relevant general duty provision (the employer's duty to employee truck drivers; the consignor's duty to truck drivers; the trucking company's duty to owner drivers; the employee driver's duty to members of the public, other drivers, other employees or herself; or the owner-driver's duty to others). This could be specified in a number of ways:

        (i) the legislative provision could provide that failure to comply with a safe driving plan is taken to be an offence, unless, (A) if the driver is charged, the driver can provide a reason for not following the plan (pressure from the consignor or trucking company etc – in which case the party imposing the pressure will be charged) or (B) if the trucking company or consignor is charged, the person charged can show that the conditions imposed upon the driver were as safe, or safer than, the conditions specified in the safe driving plan. Another possible defence might be that the conditions specified in the plan were impossible to execute for reasons beyond the control of any of the parties (for example, there was government initiated road work or a natural disaster which blocked the proposed route), and that the parties modified the plan to provide the safest alternative plan. This effectively reverses the

onus of proof onto the defendant once it is shown that the safe driving plan was not followed. This approach follows that taken in the Victorian, South Australian, Tasmanian, Northern Territory and Commonwealth OHS statutes in relation to compliance with an approved code of practice.

(ii) The legislative provision could simply provide that a failure to comply with an acceptable safe driving plan is evidence of a contravention of the relevant general duty provision. In the absence of other evidence, this would probably be enough to prove an offence. This is the approach taken in the OHSA(NSW) in relation to breaches of Industry Codes of Practice (OHSA(NSW) s 46).

Proposal (i)(B) and proposal (ii) are consistent with a proposal (see 4. and 5. below) that there be a presumption of a breach of the relevant general duty provision in the OHSA if the cartage rate for the trip is below the rate fixed in the relevant federal award.

Conclusion

A key proposal of the inquiry is the safe driving plan, a one page document containing the outcome of a risk assessment in relation to the specified journey, indicating the key conditions of the journey, including trip time, pay rates and other safety information. The most effective way of incorporating the safe driving plan into the regulatory regime is legislate that failure to comply with a safe driving plan is taken to be an offence, unless, (A) if the driver is charged, the driver can provide a reason for not following the plan (pressure from the consignor or trucking company etc – in which case the party imposing the pressure will be charged) or (B) if the trucking company or consignor is charged, the person charged can show that the conditions imposed upon the driver were as safe, or safer than, the conditions specified in the safe driving plan, or that it was not possible to comply with the safe driving plan (for example, because of government initiated road works or natural disaster), and that the plan was modified to provide the safest alternative plan.

4. Uniform Minimum Award Rates

Australia has a complex federal industrial relations system. The complexity arises principally from the limited power given to the Federal government, in section 51(xxxv) of the Federal constitution, to legislate for "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of one state." This means that the federal government cannot regulate directly for wage rates or to impose occupational health and safety (OHS) standards, and can only establish the machinery to facilitate the prevention and settlement by instruments (such as awards) of industrial disputes involving parties who have some nexus with an industrial dispute extending beyond the limits of one state. The federal system (see the *Workplace Relations Act* 1996) at the moment covers all employees in Victoria. It exists side by side with state systems in the remaining States, including New South Wales. The state systems have the potential to cover all employees within the state, and do not suffer the kinds of constitutional limitations imposed on the federal system. Where a federal award and a State award both purport to cover the same parties, the Federal award will prevail to the extent of the inconsistency (see section 109 of the Commonwealth Constitution, and section 152 of the *Workplace Relations Act* 1996 (Cth)).

One of the important issues identified in the submissions to this review is the need for a uniform minimum award rate for long haul trucking. The details of this minimum rate are not important to this advice, and are canvassed in the main part of the report. Rather, the issues to be canvassed here are: (i) how a consistent award rate can be established for state and federal

award provisions covering long haul trucking work; and (ii) how the rate can be enforced. This latter issue is examined later in this advice.

In New South Wales, Federal and State awards cover the long haul trucking industry. The Federal award is the *Transport Workers (Long Distance Drivers) Award* 1993, and New South Wales award is the *Transport Industry (State) Award*. The Federal award covers all the employees of employers or employer organisations who are party to the award. The Schedule to the award indicates which parties have been served with a log of claims and made party to the award. The New South Wales award is a "common rule" award,[19] meaning that it purports to cover all employers in the industry not covered by the Federal award.

While these principles are simple to state, in practice award coverage in the NSW long haul trucking industry is confusing. This is because the technicalities of federal award coverage are difficult to understand, and many truck drivers are unaware of the way in which the award systems operate.

As noted above, unless covered by the Federal award, all employers and employees in the industry are covered by the State award. While the Federal system can only cover "disputes extending beyond the limits of any one State", in practice it is very easy to satisfy this "interstateness" requirement. All that is required is that the federally registered union serve a common log on employers in more than one State. Employers not already party to the Federal award can be "roped in" to the principal award by the union serving a log of claims on the employer, and persuading the Australian Industrial Relations Commission to make an order varying the principal award to include the newly served employer in the Schedule. This is a costly and time-consuming process, because it requires the union to know of the existence of the employer, and to serve the employer with the relevant documents. It also requires the parties to be able to satisfy that Australian Industrial Relations Commission that it can exercise its jurisdiction to make an award. This point is discussed in the following paragraph.

"Roping in" an employer previously covered by the common rule state award would result in the employer effectively being removed from the State award, and covered by the Federal award. The *Industrial Relations Act* 1988 (Cth), and its predecessors, in section 111(1)(g)(ii) empowered the Federal Commission to refrain from dealing with a dispute on the ground that the dispute "has been dealt with, is being dealt with or is proper to be dealt with by a State arbitrator". Until the mid-1970s, the Federal Commission tended to interpret this provision in favour of maintaining State coverage in all but exceptional circumstances.[20] Since that time, the Federal Commission has been more willing to extend federal coverage. However, the *Workplace Relations Act* 1996 (Cth) has attempted to redress this movement towards expanding federal jurisdiction. Section 111AAA(1) provides that the Commission must *cease* dealing with an industrial dispute in relation to employees where it is satisfied that "a State award or State employment agreement governs the wages and conditions of employment" of employees whose terms and conditions are subject to a dispute before the Australian Industrial Relations Commission. Section 111AAA contains a proviso that the Commission must be satisfied that ceasing to deal with the matter would not be contrary to the "public interest". In order to determine the public interest the Commission must give "primary consideration" to the views of the employers and employees concerned, and must inform itself of these views as quickly as it can and in whatever manner it thinks fit. There is very little guidance available as to what would constitute "the public interest" for the purposes of

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19 See *Industrial Relations Act* 1996 (NSW) section 12, which provides that a New South Wales award is, subject to its terms, "to all employees and employers" engaged in the industry, "whether or not they were a party to the award".

20 See B Creighton and A Stewart, *Labour Law: An Introduction*, 3rd ed, Federation Press, Sydney, 2000 at 114.

determining the exceptional circumstances under which the Federal Commission can make an award in relation to a dispute already covered by a State award. These provisions clearly place a strong onus on those seeking to change award coverage from a State to the Federal system to show that it would be contrary to the public interest for the Federal Commission to cease to deal with the matter. The clear intent of the provision is that the Commission should decline jurisdiction in all but exceptional circumstances. Section 111AAA also leaves the provisions in section 111(1)(g) with very little scope for operation.[21]

A further difficulty in establishing common award provisions for all long haul truck drivers is that the Federal award system applies to employers and employees only. A large proportion of long haul truck drivers are owner drivers, and do not fit within the award framework. New South Wales is the only State that regulates, through Contract Determinations made under the *Industrial Relations Act* 1996 (NSW),[22] the terms and conditions of owner drivers (contract carriers) by principal contractors. Examples in the transport industry are the *General Carrier (Contract) Determination*, and the *Interstate Carrying (Contract) Determination*, which has not been updated in recent times, is rarely complied with, and covers only interstate trucking.

In addition, the New South Wales Industrial Relations Commission has power, under section 106, of the *Industrial Relations Act* 1996 (NSW), to review "any contract or arrangement or any related condition or collateral arrangement under which a person performs work in any industry" where the work is performed in New South Wales, or, if the work is performed outside New South Wales, the contract is governed by the law of New South Wales. The Commission must consider whether the contract or arrangement is unfair, harsh or unconscionable; whether it is against the public interest; whether it provides remuneration which is less than the person performing the work would have received as an employee; or whether it is designed to or does avoid the provisions of an award, industrial agreement or contract determination. If the Commission finds any of these circumstances to be made out, it may vary the contract or arrangement, declare any part of it to be void, and may make orders for the payment of money, or to prohibit any further unfair contracts or arrangements from being made.[23] A similar power is available to the Australian Industrial Relations Commission in section 127A of the *Workplace Relations Act* 1996 (Cth). None of these provisions, however, offer a solution to the issue of creating uniform reward structures for long haul trucking work.

Given all of these difficulties, one possible means of vesting the Australian Industrial Relations Commission with jurisdiction would be for the Federal government to amend the *Workplace Relations Act* 1996 to apply to all interstate trucking activity, utilising the head of power in section 51(i) of the Federal constitution, which deals with "trade and commerce with other countries and among the States". This power enables the federal government to regulate employment conditions of persons or firms engaged in interstate trade and commerce. It has been used to regulate the working conditions of flight crew officers, maritime workers and waterside workers. In principle, it could be used to give the Australian Industrial Relations Commission jurisdiction over all interstate trucking, including the rates to be paid to owner drivers. Freed of the constraints of the wording of section 51(xxxv), the Commission could be given the power to make a common rule covering all employers in the industry involved in interstate truck work. It could also regulate the rates to be paid by consignors and clients.

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21 See Creighton and Stewart, 2000 at 115.

22 See *Industrial Relations Act* 1996 (NSW) sections 306-21. Sections 322-31 make provision for agreements concerning contract conditions.

23 See J Macken,, P O'Grady and C Sappideen, *The Law of Employment*, 4 ed, Sydney, LBC Information Services, 1997:479-561.

One difficulty with this proposal is that, arguably, it would not cover intrastate truck driving. As Creighton and Stewart note, however:[24]

> "One line of argument that would considerably expand the significance of s 51(1) is that because interstate trade and intrastate trade are economically interdependent, the Commonwealth's power over the former must extend by inference to the latter, so as to make the regulation of interstate trade more effective. But while this reasoning has been adopted in relation to the equivalent power in the United State Constitution …, the High Court has to date refused to accept it in the Australian context."

The other constitutional heads of power which might solve the problem are (i) the "corporations power" (section 51(xx) of the Commonwealth Constitution); (ii) the "external affairs" power (section 51(xxix)), if there was an international convention pertaining to truck safety which could be implemented; or (iii) the possibility of State governments referring the relevant powers to the Federal government under section 51(xxxvii) of the Commonwealth Constitution. This latter approach was taken by the Victorian government late in 1996 to merge the Victorian Industrial Relations system into the Federal system. It has also recently been used in relation to the Corporations Law. The difficulty with the referral of powers approach is that, first, each State must be willing to refer its relevant powers (though it might be sufficient for the Eastern states to refer their powers), and, second, that each state would be free to withdraw its referral whenever it wished to do so. The corporations power approach would require clients/consignors, truck companies and owner drivers to be corporations. I am unaware of the rates of incorporation in the industry, but I would be surprised if they would be sufficient to support the use of the power. The Federal government has shown great reluctance to use the external affairs power, and so the most likely basis for federal legislation would be the interstate trade and commerce power.

Another difficulty with the proposal give the Australian Industrial Relations Commission power to regulate the rates for all long haul trucking work is the political infeasibility of the current federal government legislating to expand the jurisdiction of the Australian Industrial Relations Commission. Since 1996 the Federal government has been committed to reducing the powers of the Australian Industrial Commission, and is unlikely to regard favourably a proposal to increase the Commission's powers in any area.

Another way of ensuring consistency between the Federal award and the State awards, so as to ensure a common "benchmark" for award conditions, is to ensure that the Federal and state awards contain the same provisions. This will be difficult where each award has traditionally contained different provisions, and where each tribunal operates under different processes and principles. Ideally, the State tribunals would vary the State awards to bring them into line with the Federal award, so that the State awards "mirror" the Federal award. The *Workplace Relations Act* 1996 contains several provisions relevant to the issue of the interaction between the Federal and State industrial relations systems, which may facilitate this process of bringing the various awards into line with each other. Sections 171 and 172 require the President of the Australian Industrial Relations Commission and the Registrar to convene regular meetings of heads of tribunals and registrars respectively to discuss matters of mutual concern. The Federal and State statutes also contain provisions enabling members of the Federal Commission to deal with requests by heads of State authorities to deal with disputes or claims with which the State authority is empowered to deal, and vice versa (see sections 173 and 174 of the *Workplace Relations Act*). Section 175 makes provision for joint sittings of State and federal tribunals, and section 176 provides for co-ordination between State and federal tribunals as to outcomes. In the absence of a single federal award rate, the report emanating from this inquiry should recommend that the Australian and New South Wales

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[24] At 115.

Industrial Relations Commissions, and all relevant industrial parties, take steps to harmonise the Federal and New South Wales awards and determinations covering long haul truck driving.

In sum, the jurisdictional issues in ensuring a uniform set of rates in the long haul transport industry are complex. This advice suggests that the most effective solution will be for the federal government to use the interstate trade and commerce power to legislate to give the Australian Industrial Relations Commission full jurisdiction in relation to interstate truck rates.

There are, however, other ways of approaching the issue, both involving amendments of New South Wales legislation. The issue of minimum award rates is crucial to this inquiry because low cartage rates resulting from unscrupulous competition in the long haul trucking industry has led to reduced driver and public safety as drivers to work long hours, suffer severe fatigue, and breach regulatory requirements in order to make a living.

One possible way of dealing with the issue of minimum cartage rates is for the New South Wales government to amend the *Industrial Relations Act* 1996 (NSW) to require the New South Wales Industrial Relations Commission to adopt the relevant rates in the federal *Transport Workers (Long Distance Drivers) Award 1993* into corresponding New South Wales awards and determinations covering owner drivers performing long haul truck driving.

Building on the existing provisions in the *Industrial Relations Act* 1996 (NSW) in relation to award making and contract determinations (see above), the New South Wales Parliament arguably has legislative power to enact laws covering terms and conditions pertaining to long haul trucking within and beyond New South Wales borders. In 1970, the Full Bench of the Industrial Relations Commission in Court Session,[25] in a report after an inquiry under section 88 of the *Industrial Arbitration Act* 1940 (NSW), held that the New South Wales Parliament has legislative power to empower the New South Wales Industrial Relations Commission to determine terms and conditions of owner drivers in relation to contracts involving journeys which take place in New South Wales, and in addition, journeys which take place outside New South Wales, provided that the journey has a real connection with New South Wales. At page 723 of the report, the Commission stated that:

> "We think that it is clear that, under the Constitution Act, 1902, the Parliament of New South Wales has power to pass laws authorising a tribunal to determine the remuneration to be paid to and the conditions to be afforded to an owner driver on an interstate journey, in relation to that part of the journey which takes place in New South Wales. But such a law would not be very effective if it did not more than that, because the remuneration in respect of the part of the journey which took place outside New South Wales could be reduced to nullify any advantages for the owner driver under the State law. To be effective, the Law would need to have some operation outside the State of New South Wales."

After examining the relevant case law, the Commission continued, at pages 724-725:

> "The fact that work is done within a state provides a sufficient ground for the legislature of the state to pass a valid law related to the doing of that work and having some extra-territorial operation, and this is so both where the contract pursuant to which the work is done has been made within the state or outside the state."

Consequently, the New South Wales Parliament would appear to have power to legislate to vest the New South Wales Industrial Relations Commission with the power to make

[25] Inquiry and Recommendations dated 23 February 1970.

minimum rates covering owner drivers contracted to do long haul truck work, provided that part of the journey is through New South Wales. The Commission would be so empowered even if the party engaging the owner driver was based outside New South Wales.

Another option worth considering is for the New South Wales government to amend the *OHSA* (NSW) to provide that an arrangement to carry freight at a rate below the rate in the relevant federal award (even if the award technically does not cover the consignor and the owner driver) is *prima facie* a breach of the relevant general duty provision in the OHSA(NSW) (see 1. above for a discussion of these duties). For example, a consignor engaging an owner driver to carry freight at a rate below the relevant federal award would be presumed to be breaching section 8(2) of the *OHSA* 2000 (NSW) (as amended along the lines suggested in 1.), unless the consignor could provide evidence clearly showing that the arrangements for the trip expressly dealt with driver and public safety. The presumption that the general duty had been breached would be a very strong presumption, and evidence in rebuttal would have to deal with the pressures in the owner driver to complete the trip quickly or to take other short cuts in order to earn a satisfactory living.

It might be argued that this device (a strong presumption that failure to pay the federal rate is a breach of the relevant general duty in the OHSA) involves a State agency or a State court or tribunal enforcing the federal award provision. This, however is not what is proposed. The federal award rate represents a rate of pay that is compatible with the truck driver carrying out the journey following driving schedules, a driving route, and a travelling speed that do not place the driver at risk of a collision or other incident which might pose a risk to the safety of the driver or any member of the public. What is being proposed is simply an evidentiary provision: that failure to pay rates equivalent to those set out in the relevant federal award raises a presumption that the person paying the rates is providing strong incentives for the truck driver receiving those lower rates to execute the journey in a manner that poses a risk to the driver, the public, or both the driver and the public. This does not involve enforcing the federal award provision, but rather accepting that the federal award provides a benchmark accepted by the community as being a rate of payment that enables the work to be carried out safely.

Conclusion

This section has canvassed a range of possible measures to introduce uniform award rates for long haul trucking work. The three best options would appear to be

(i) the federal government legislating to use the "trade and commerce" power in the federal constitution to amend the *Workplace Relations Act* 1996 to empower the Australian Industrial Relations Commission to make common rule award provisions for interstate long haul trucking work carried out by both employee truck drivers and owner drivers; or

(ii) the New South Wales parliament using the full extent of its legislative powers to empower the New South Wales Industrial Relations Commission with jurisdiction to make award provisions and contract determinations in relation to the terms and conditions of long haul trucking work conducted by employee drivers and owner drivers, where all or part of the journey is in New South Wales; and/or

(iii) the New South Wales parliament amending the *OHSA* (NSW) to provide that an arrangement to carry freight at a rate below the rate in the relevant federal award (even if the award technically does not cover the consignor and the owner driver) is *prima facie* a breach of the relevant general duty provision in the OHSA(NSW). Similarly, the amendment might specify that a failure to pay the relevant rate in a State award or contract determination would, *prima facie*, be a breach of the relevant general duty in the OHSA(NSW). For further discussion of these issues, see 5. below.

5. A Special Long Haul Trucking Industry Safety Inspectorate

Five regulatory regimes potentially cover the NSW long haul trucking industry: awards under the Federal Industrial Relations system; awards under the NSW Industrial Relations system; the NSW road transport legislation (specifically, the *Road Transport (General) Act* 1999, and the *Road Tansport (Safety and Traffic Management) Act* 1999 and regulations made under the latter Act); the *Road and Rail Transport (Dangerous Goods) Act* 1999 and regulations made under that Act; and the OHSA(NSW). Each of these regimes has its own enforcement agency. This leads to complex issues of enforcement, as it is undesirable to have five different enforcement agencies seeking to enforce provisions covering long haul trucking in New South Wales. The issue is further complicated by the fact that a small percentage of trucking crosses state borders, thereby multiplying the various state regulatory regimes and enforcement agencies.

There are at least four possible solutions to this question. For the purposes of this inquiry (and subject to the approach taken to the issues outlined in 4. Above), the most important regulatory regimes covering long haul trucking are the award provisions, the road transport provisions, and the OHS provisions.

The ideal solution would be to have one national regulatory regime covering long haul trucking, with one federal statute setting out the relevant provisions covering the industry, and one enforcement agency charged with enforcing the statute. Failing a single national regulatory system, a single national long haul road trucking inspectorate would be the next best option. The inspectorate would have powers to enforce all of the relevant statutory provisions covering long haul trucking (see above). A third option is to have a New South Wales long haul trucking authority, with an inspectorate. This inspectorate would be given the powers already given to each enforcement agency charged with enforcing the various New South Wales statutes. A fourth possibility would be to rely on the WorkCover inspectorate, and to amend the OHSA(NSW) to provide that failure to pay relevant award rates, or to comply the relevant Roads and Traffic Authority regulatory requirements (see above, 4. and 2.), is *prima facie* a contravention of the pertinent general duty under the OHSA(NSW).

A New South Wales long haul trucking inspectorate (the third option outlined at the beginning of this section) could simply be established by legislation passed by the New South Wales government. The legislation could establish a long haul trucking inspectorate as an independent entity, or alternatively within, say, WorkCover or the Roads and Traffic Authority. The legislation would give long haul trucking inspectors the inspection, investigation and enforcement powers under the New South Wales OHSA, the road transport legislation (see 3. above), and *Industrial Relations Acts*. To avoid confusion, each of the Acts (OHSA(NSW), the road transport legislation, and the *Industrial Relations Act*) could be amended to make it clear that the long haul trucking inspectorate has been vested with the enforcement powers of each of the inspectorates, at least in relation to long haul trucking activities. The OHSA(NSW) already provides, in section 47, that WorkCover may appoint as inspectors for the purposes of the OHSA(NSW) a statutory officer, a public servant, a person employed by a public or local authority or a person belonging to a class of persons prescribed by the regulations. Likewise, under the New South Wales road transport legislation, enforcement activities are carried out by "authorised officers", which include police officers, persons appointed for the time being by the Roads and Traffic Authority as an authorised officer for the purposes of the provision for which the expression is used, or a person prescribed by the regulations (see section 3 of the *Road Transport (General) Act* 1999 (NSW). It may be, therefore, that no legislative amendment is required to some of the statutes, and members of the new long haul trucking inspectorate can simply be appointed following existing procedures.

There are no constitutional impediments to the New South Wales Parliament enacting these provisions. Subject to legislative powers vested in the Commonwealth government, State

governments have plenary powers to legislate within their own jurisdictions. The only restriction on the New South Wales Parliament's power to legislate for a New South Wales long haul trucking inspectorate pertains to Federal award provisions covering the long haul trucking industry (see 4. above). If the proposed New South Wales long haul trucking inspectorate was to be empowered to enforce Federal award, an amendment to the Federal *Workplace Relations Act* 1996 would be required. The amendment would delegate inspection and enforcement powers to the new inspectorate. There would appear to be no constitutional impediment to such a legislative arrangement. The High Court has in the past upheld State and Federal legislation purporting to give an industrial tribunal in the New South Wales coal industry powers under both the State and Federal industrial relations legislation.[26] In the 1980s an award in the vehicle building industry included comprehensive general duty OHS legislation, and made provision for "inspectors", who might be State OHS inspectors, to be appointed under the award.[27]

Other States could introduce their own long haul trucking inspectorates using a similar approach. The limitations of this approach would be that each State inspectorate would only have power to enforce the OHS, industrial and road transport provisions passed in that jurisdiction. A national approach (the first two options outlined above) would require further measures.

As discussed in 4. above, the establishment of a national long haul trucking regulatory regime (the first option outlined above) or a national long haul trucking inspectorate (the second option) inspectorate is a more complex issue. As discussed above (see 4.), either a co-operative solution is required, or the Federal government would have to legislate, using one or more of the heads of power outlined in 4. above.

The most complex solution would be for the Commonwealth and each state to legislate to amend the relevant OHS, road transport and industrial relations statutes to provide that the national long haul trucking inspectorate has the powers of inspectors under each of the statutes. To avoid unnecessary complexity, each government would need to legislate in exactly the same terms. Such consistency would be facilitated by template legislation being passed, for example, by the New South Wales Parliament, and adopted by each of the other Parliaments. This is an extremely cumbersome process, and it is unlikely that the degree of co-operation required of each of the State and federal governments would be forthcoming.

An alternative solution would be for the federal government to pass national legislation, establishing a national inspectorate under the auspices of, for example, the National Road Transport Authority. The Commonwealth government could even go further, and enact national long haul trucking safety legislation, which mirrored, for example, the New South Wales provisions discussed above.

Second, the inspectorate, or even a national long haul trucking regulatory regime, could be introduced by the Federal government, after each state government had referred the relevant legislative power to the Federal government under section 51(xxxvii) of the Commonwealth Constitution, as discussed above.

A third option is that the Commonwealth Parliament could legislate unilaterally using one of the other powers in section 51 of the Commonwealth Constitution. As discussed above, the most likely provision would be section 51(i) ("trade and commerce … amongst the States").

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26 *R v Duncan; Ex Parte Australian Iron and Steel Pty Ltd* (1983) 158 CLR 535; *Re Cram; Ex Parte NSW Colliery Proprieters' Association Ltd* (1987) 163 CLR 117 at 127-131.

27 See *AMI Toyota v Association of Draughting, Supervisory and Technical Employees* (1986) 17 IR 1.

The final option builds upon the discussions in 3. and 4. above. In effect the OHS legislation can become the central legislative provision for the regulation of the long haul trucking, and the OHS inspectorates the principal enforcement agency. The OHS statutes could be amended to provide that failure of any party to pay the cartage rate specified in the relevant award, or to impose conditions which led to drivers being pressured to contravene technical requirements for driving, work or rest times under the Road Transport regulations etc, is rebuttable proof of a contravention of the relevant general duty provision. This would enable the OHS inspectorate (for example, the NSW WorkCover Authority) to take appropriate enforcement action, including prosecutions (with the prospect of heavy financial penalties).

Conclusion

The most feasible solution to this issue is likely to be the creation of a New South Wales long haul trucking authority, with an inspectorate empowered by New South Wales legislate to exercise the inspection and enforcement powers under the OHSA(NSW), the New South Wales road transport legislation, and the New South Wales *Industrial Relations Act* 1996. Federal legislation would be required to vest the inspectorate with powers to enforce Federal awards, as an agent of the Commonwealth workplace relations inspectorate. Alternatively, the inspectorate could simply be given power to enforce the OHSA(NSW), and the OHSA(NSW) itself could be amended) to provide that failure to pay relevant award rates, or to comply the relevant Roads and Traffic Authority regulatory requirements (see above, 3.), is *prima facie* a contravention of the pertinent general duty under the OHSA(NSW).